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The Solicitors' Journal

VOL. LXXIX. **Saturday, October 19, 1935.** No. 42

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Current Topics.

Further Judicial Changes.

In our last week's issue we chronicled three important judicial changes, and to those have now to be added two more. The vacancy created in the office of Lord of Appeal in Ordinary consequent on the acceptance by Lord Wright of the Mastership of the Rolls has been promptly filled by the promotion of Lord Justice Roche, following thus closely on that of his colleague Sir Frederick Maugham. Both had served but a short time in the Court of Appeal, but during that period each displayed that promptitude of decision and clarity of expression which characterised them when puisnes. Sir Adair Roche is one of the numerous band of great lawyers who may be said to have graduated in the Commercial Court, which, since the days when the late Lord Sumner and Lord Justice Scrutton were in the full tide of their practice at the Bar, has seen so many of its practitioners promoted to the Bench. There were those in the profession who were inclined to think, and indeed say, that it was a mistake to regard a familiarity with the obscure phraseology of charter-parties and bills of lading as a necessary passport to eligibility for the Bench; but though there were some who took this line, there never was any doubt as to the new Lord of Appeal's qualifications for promotion. A forceful advocate, he was equally effective before a jury as before a judge sitting alone, and it was early recognised that his appointment to the Bench was only a question of time, and that not a long time. On the Bench he has ever been prompt in making up his mind; he has been clear in the expression of his judgment; and he proved a highly successful *nisi prius* judge. During the short time he has sat in the Court of Appeal he has been equally effective, and, no doubt, will be equally so in the work of the House of Lords, which, notwithstanding recent restrictions on the right of appeal to that tribunal, is likely to have still a sufficiency of eminently debatable questions to resolve. To succeed Lord Justice Roche in the Court of Appeal, Sir Leslie Scott, who filled for a short time the office of Solicitor-General some years ago, has been appointed, and his many friends will rejoice in this recognition, albeit a little belated, of his eminent legal qualifications. As a silk he enjoyed a large practice, and to the discussion of all his cases he invariably contributed a weighty argument. Some may recall as an example of his thoroughness of presentation the exhaustive and learned argument for the plaintiffs in *China Navigation Co.* v. *Attorney-General* [1932] 2 K.B. 197—a case involving the right of the Crown to require payment by British shipowners for military protection of their ships in Chinese waters against internal piracy. Though not accepted by the court the argument was illuminating and a worthy contribution to the subject. Sir Leslie will, we feel sure, prove a valuable addition to the personnel of the Court of Appeal.

Central Criminal Court: October Session.

The October Session of the Central Criminal Court began last Tuesday. The list at the beginning of the week, which showed a total of seventy-four persons awaiting trial or sentence, included, among alleged offences, three charges of murder, four of attempted murder, four of causing grievous bodily harm, and eight of wounding. Two charges of robbery while armed, three of robbery with violence, ten of breaking and entering, two of obtaining money with menaces and three of conspiracy to defraud, figure in the list, which also contains a charge of perjury, a charge of coining, and four of bigamy, while two fire assessors are charged with conspiracy to defraud insurance companies in connection with fire claims. The foregoing total had increased to eighty-seven persons before the session opened. The case of a peer charged with manslaughter in connection with a motor car collision, which was also in the list, was dealt with on the opening day, when the Recorder, Sir Holman Gregory, K.C., said that with regard to the foregoing charge he would enlarge the recognizances, including the accused's bail, until the pleasure of the House of Lords (before whom the charge, as one of felony, must be tried) should be signified. With regard to a second charge of dangerous driving, the recognizances, including bail, were also enlarged, until a further order by the Central Criminal Court.

Magistrates' Jurisdiction.

Sir Archibald Bodkin, Recorder of Dover, referred in favourable terms to the extended jurisdiction of magistrates on being presented with white gloves last Tuesday when there were no cases to be heard at Dover Quarter Sessions. Divisional justices sitting in petty sessions divisions, or boroughs being entrusted with cases which formerly always came before Quarter Sessions, was described as one of the great features of modern legislation. That was thought to be satisfactory because the determination of the cases and the way of dealing with the offenders was prompt, which was a great consideration in the administration of the criminal law. It was also less expensive. "Year after year," the learned Recorder continued, "justices have more and more entrusted to them in the way of cases which might go to the Superior Courts, and no one could deny that the result has been entirely satisfactory." Meanwhile, we learn that the Summary Courts (Social Services) Committee, which has been at work for about a year and has concluded the taking of evidence, is now considering the problems incidental to improving the organisation at the disposal of magistrates in dealing with matrimonial disputes and juvenile offenders. Moreover, the committee is likely to issue its report early in December, as a result of which a thorough reorganisation of the probation service is foreshadowed. A writer in *The Times*, recently, alluded

to the urgency and difficulty of some of the problems involved. The securing of suitable probation officers is described as particularly difficult, while the necessity for such is accentuated by the tendency of offences to increase, especially on the part of children. Mention is also made of the increase in the work of probation officers occasioned by the coming into operation of the Children's Act, which raises the age limit of juvenile offenders, while the conviction is recorded that in some instances children have been sent to Home Office Schools who, if the probation system had been equal to the task, might have been allowed to remain in their homes under the watchful eye of the probation officer. It is thought also that in matrimonial cases there is ample room for reform of a police court procedure which too frequently results in the break-up of family life when parents are both more or less the victims of circumstances, and the writer just referred to thinks that it is almost certain that the recommendations of the committee will include valuable suggestions for preventing the separation of man and wife until every effort has been made to re-unite them where adjustment of differences is found possible after the parties have been interviewed by properly qualified probation officers.

Law, Commerce and Probation.

SEVERAL matters calculated to be of interest to readers were mentioned recently when Captain G. P. ELLISTON, a past chairman of the Law and City Courts Committee of the Corporation of London, was entertained at dinner at Cutlers Hall and presented with his portrait in oils. The whole structure of the commerce of the City of London was, Captain ELLISTON said, based upon law. It was because of the soundness of the administration of that law that the nations of the world were anxious to trade with this country. Reference was made to the 60,000 plaints dealt with last year as evidence of the confidence which exists in the Mayor's and City of London Courts—the work being carried on expeditiously and inexpensively, and there being no arrears—but the suggestion was made that the procedure might be improved by the new County Court Rules, which would, it was hoped, enhance the usefulness of the courts. Mr. CECIL WHITELEY, the Common Serjeant, responding to the toast of the "Legal Profession," expressed a desire to see the old glories of the Mayor's Court revived. If the solicitors of the City would put their heads together, he could see no reason why the Mayor's Court should not flourish again as it had done in the past. Turning to another subject, Mr. WHITELEY paid a tribute to the three probation officers working at the Central Criminal Court. Reference was made to a recent report which he had asked for and which disclosed that out of forty cases dealt with by probation, all had been reported as satisfactory and there had been no case of failure. The hope was expressed that there would be some statement on the results of probation of the Central Criminal Court every year. We desire to express our indebtedness to *The Times* for the foregoing information.

Noise: Transport Committee's Report.

WE have in the past alluded to the work of the departmental committee of the Ministry of Transport in connection with the reduction of the noise of certain road vehicles. One of the principal difficulties experienced in the enforcement of the law in their regard is associated with the vagueness of the term "excessive noise," and if the confidence of the committee is well-founded—and there seems to be every reason to think that it is—this particular obstacle to better conditions is likely soon to disappear. For the first time, it is announced, success has attended experiments in noise measurement which is now capable of being expressed in "phones." Tests have been carried out with a noise meter designed to simulate the behaviour of the ear under the appropriate conditions of loudness, experiments being conducted with various types of motor cars, motor cycles, and goods and passenger-carrying vehicles under all kinds of conditions. The experiments indicate that while private motor cars in general make little noise, commercial vehicles are rather less satisfactory and motor cycles are less satisfactory still. The quantum of the new unit—of which it is necessary to have some idea in order to appreciate the recommendations presently to be stated—may be gauged by the fact that the greatest noise which the human ear can bear without pain is stated to be in the neighbourhood of 130 phones. The sound of an aeroplane engine is represented by 110–120 phones, that of a pneumatic drill by 105–110, that of a loud motor horn by 100–105, and that of a tube train by 90–95, while at the other end of the scale (the threshold of audibility is zero) a quiet country house emits 20–30 phones, a quiet street 40–50, and average conversation 60–75. The committee's recommendations, which would apply only to vehicles made after 1st August, 1936, are that all new vehicles shall be tested before leaving the factory and shall not be sold for use in this country unless they conform with the following conditions: (1) when the vehicle is driven with full throttle at 30 miles an hour—or at the maximum legal or possible speed, if less than that above stated—using the gear preferred by the driver, the loudness measured at a point 18 inches to one side of the vehicle shall not exceed 90 phones; and (2) when the vehicle is stationary with the engine running at the speed which would give maximum power output the loudness 18 inches behind the exhaust pipe shall not exceed 95 phones. It is proposed that the foregoing figures should be raised by 5 in the cases of commercial vehicles and motor cycles manufactured during the following two years from the date above stated. The Minister of Transport is reported to have said that he had not gone into the question whether the recommendations, if accepted, would require new legislation, but it was possible that they would be covered by the powers which the Ministry already possesses. The Committee is continuing its work under the chairmanship of Dr. G. W. C. KAYE, who has acted in that capacity during the illness of Sir HENRY FOWLER.

Built-up Areas.

WHEN the Legislature set up "a system of street lighting furnished by means of lamps placed not more than two hundred yards apart" as *primâ facie* the criterion of a built-up area for the operation of the 30 miles-an-hour speed limit, it also imposed upon the appropriate local authority the duty of erecting and maintaining the prescribed traffic signs in such positions as might be requisite in order to give effect to general or other directions given by the Minister of Transport for the purpose of securing that adequate guidance was given to drivers of motor vehicles as to the places where a length of road begins, and ceases, to be a road in a built-up area, while similar directions apply in regard to lengths of road deemed to be, or not to be, in built-up areas, notwithstanding that the lamps may be further apart than or within the statutory distance (Road Traffic Act, 1934, s. 1, sub-ss. (1) and (7)). In a recent case, objection was taken by counsel who appeared for the Automobile Association and for one summonsed for exceeding the 30 miles-an-hour limit, on the ground that the position in regard to the road in question was extremely unsatisfactory. No restriction signs, and lamp-posts more than 200 yards apart were described as constituting a serious state of affairs. "The motorist," it was said, "is not getting anything like a fair chance here. If it is intended to make an area a restricted one, proper signs ought to be erected." The difficulty seems to have been created by the fact that the lamp-posts were not much over 200 yards apart, the distance varying between 213 and 253 yards, though the evidence conflicted to some extent, and their proximity suggested that a length of road, not a built-up area, was such. The summons was dismissed, but an application for costs against the police

was refused. When the decision had been announced, it was explained in answer to a request that the Automobile Association be furnished with a list of motorists convicted for speeding on the same stretch of road with a view to steps being taken to get into touch with the Home Office which might quash the convictions, that no record was kept of the places where the "offences" were committed. The case raises an interesting point in regard to the duties of local authorities under the section of the Road Traffic Act above alluded to.

Small Holdings and Allotments.

THE report on the work of the Land Division of the Ministry of Agriculture and Fisheries, which has just been published by the Stationery Office (price 1s. net), contains a good deal of interesting information concerning the present position in regard to small holdings and allotments. The total area of land acquired during 1934 by local authorities for small holdings under the Small Holdings and Allotments Acts, 1908 to 1931, shows a decline when compared for that of the two previous years, the figures for 1932, 1933 and 1934 being respectively 5,053, 4,651 and 4,263. Small holdings, it may be remembered, exceed one acre but not fifty acres unless their annual value does not exceed £50, and are provided by county and county borough councils. The report indicates a general improvement in the financial position of smallholders. A number of tenants are moving to larger holdings and the number of failures, a considerable proportion of which are due to reasons of a personal character, is small. The position in regard to allotments—small plots of land, not over five acres in extent, provided by borough, urban district and parish councils—appears to reflect the blurring of the distinction between town and countryside which is a marked characteristic of the age. A decrease in agricultural and horticultural activities in connection with allotments in rural areas has been accompanied by an increase in such activities in urban areas. Thus the report records a substantial drop in the acreage of allotments provided in rural areas, both under the Allotments Acts and by private landowners, an area of some 11,600 acres, representing a nett loss of about 32,000 holders, having ceased during 1934 to be utilised in this manner. This tendency, which has been observable for some years past, is, it is thought, to be explained partly by the improved position of the agricultural worker and partly by the reluctance of younger men to undertake the cultivation of an allotment "possibly owing to counter-attractions in neighbouring urban areas and the modern facilities of transport." On the other hand, the number of allotment holders in urban areas has increased for the third year in succession. Since 1930 the number of holders in these districts has increased by nearly 15,000, although the area of land cultivated is nearly 700 acres less. The estimated total number of allotments for the country at the end of 1934—allowance being made for the districts from which returns were not received—is 936,000, covering an area of 134,000 acres. The comparative figures for 1930, 965,000 and 146,000 respectively, show a decrease of 3 per cent. in numbers and 8·2 per cent. in area.

Company Petitions: Advertisements.

THE attention of practitioners in company matters may be drawn to certain observations made by BENNETT, J., on Monday at the beginning of the hearing of petitions relating to companies. "There are," the learned judge said, "fifty-eight petitions to-day and in sixteen of them there has been some error in the advertisements, or failure to advertise, or some violation of the rules of the court. This is far too large a number. As regards those which come on this sittings, I am going to do my best to see that the rules are observed." "I shall apply sanctions," his lordship added, "but not violence." We are indebted to *The Times* for the foregoing information.

Recent Decisions.

IN *Sylvester* v. *G. B. Chapman Ltd.* (p. 777 of this issue) the Court of Appeal upheld a decision of the county court to the effect that the facts in question disclosed no case to answer. The plaintiff was mauled by a leopard in attempting to extinguish a smouldering cigarette end which he saw burning on the straw between the barrier and the animal's cage. His employment had no connection with the leopard. There were keepers on the premises and firemen were available. The case was distinguished from that of *Haynes* v. *Harwood* [1935] 1 K.B. 146, where, it may be remembered, a policeman not on point duty recovered damages in respect of injuries received as a result of stopping runaway horses, and the principle *volenti non fit injuria* was held not to apply.

Vann v. *Eatough* (*The Times*, 10th October) is a decision on s. 20 of the Children and Young Persons Act, 1933, which prohibits any person under sixteen years of age engaging or being employed in street trading (*ibid.*, sub-s. (1)). The argument that the sale in question took place in a market held under a charter of EDWARD III and not in a street was acceded to by the justices, but negatived by a Divisional Court, which held that the Act had been infringed. The Lord Chief Justice observed that the case was the exact converse of *Stratford Co-operative Society, Ltd.* v. *East Ham Corporation* [1915] 2 K.B. 70, upon which the respondent had relied.

In *London Passenger Transport Board* v. *Sumner* (*The Times*, 12th October) a Divisional Court dismissed an appeal from a decision of Sir ROLLO GRAHAM-CAMPBELL, Chief Metropolitan Magistrate, who held that a bye-law, to the effect that each passenger should, immediately upon demand, or in case no demand should have been made, before leaving the carriage, pay to the conductor the fare legally demandable for his journey and accept a ticket therefor, was *ultra vires* as repugnant to the general law of the land and also as unreasonable. The matter arose out of alleged failure to pay tramway fares, a subject which has been treated at some length in these pages.

An interesting point in connection with the law of libel was decided in *de Normanville* v. *Hereford Times Ltd.* (*The Times*, 12th October). The question in issue was whether the protection accorded to newspapers by s. 4 of the Law of Libel Amendment Act, 1888, covered the report of a public meeting which failed in literal accuracy. There was no evidence of malice, and MACNAGHTEN, J., held that the matter complained of, which the plaintiff alleged reflected upon his calling as a priest and a city councillor, was, in effect, a fair and accurate report of proceedings at a public meeting. If the alteration made by the editor in the transcript had been made with a view of prejudicing the plaintiff, the learned judge intimated that he would have had no hesitation in coming to the conclusion that the defendants would lose the privilege accorded by the Act on the ground of malice.

Rose v. *Ford* (*The Times*, 15th October) is an important decision by the Court of Appeal on the question of the appropriate damages to be awarded in cases of death following an accident in the light of the provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, which ousts the doctrine *actio personalis moritur cum persona* in such cases. In addition to damages under Lord Campbell's Act, which were not questioned, the trial judge awarded a sum of £500 for the loss of a leg and for pain and suffering. These heads of damage was assessed separately by the Court of Appeal, £20 being awarded under the latter and £2 under the former head, in view of the fact that the injured girl died two days after its amputation. A cross-appeal for damages in respect of loss of expectation of life on the principles adopted in *Flint* v. *Lovell* [1935] 1 K.B. 354, was dismissed. It is impossible to do justice to the many important considerations involved in this case within the confines of a short note, but we hope to deal with the matter more fully in an early issue.

The Account Stated.

"One of the most ordinary business facilities which has been common to everybody who carries on business under any system which incorporates any of the ordinary principles of English contract law."

In these terms Lord Atkin referred to the account stated in *Siqueira* v. *Noronha* [1934] A.C. 332. What constitutes an account stated is familiar to practitioners, and the convenience of this form of action is clear.

It is important, however, to draw a distinction between an account stated which consists merely in the addition of a number of items on one side, and the true account stated which shows a sum due after debts on each side have been set off one against another. Both are substantive forms of action, but by reason of the doctrine of consideration the latter is more advantageous in certain circumstances than the former.

Where the debts are all on one side, and the resultant account has been accepted, the cause of action which has arisen is founded upon the admission of the defendant that the sum claimed on the account stated is due and owing to the plaintiff. The position is that the onus of proving that the money or any part of it is not due or owing is on the defendant. But the important point is that he may so prove and if he succeeds in this he will be entitled to judgment against the plaintiff. Thus, he may show that one debt comprised in the account is not due since it is void for want of consideration, or is claimed upon a consideration which has failed or upon an illegal consideration. That is to say, he may defend as to any part of the claim, if the item which that part represents could not have been sued for and recovered as a separate debt by the plaintiff. Thus, in the old case of *Scadding* v. *Eyles*, 9 Q.B. 858, where an attorney claimed money on an account stated, it was held to be a good plea that the account was stated solely of and concerning charges for work done as an attorney, and that no bill was delivered. Since the money could not be recovered as a separate item for want of a bill delivered, it was irrecoverable on an account stated for the same reason.

When, however, the account stated represents debits and credits, the action is not brought upon an admission, but upon a contract, the consideration for which is furnished by the mutual releases entailed. The matter is put in this way by Blackburn, J., in *Laycock* v. *Pickles* (1863), 4 B. & S. 497 :—

> "There is a real account stated, called in old law an insimul computassent, that is to say, when several items of claim are brought into account on either side, and, being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge of the items on each side. It is then the same as if each item was paid and a discharge given for each and in consideration of that discharge the balance was agreed to be due."

The same idea is expressed in a footnote ([d]) to *Cocking* v. *Ward* (1846), 1 C.B., at 869 :—

> "In a real account stated, the extinction of cross-demands per confusionem—not the bare act of accounting—appears to form the consideration of the promise to pay the balance."

In such a case then, the acceptance of the account is more than an admission—it is a contractual promise. From this it should follow logically, and it does follow in fact, that the full amount may be recovered, even although one or more of the items might not have been recoverable if sued for separately. Thus, with *Scadding* v. *Eyles*, *supra*, should be contrasted *Turner* v. *Willis* [1905] 1 K.B. 468. In that case a solicitor had a claim against his client for costs and the client had a cross-claim against the solicitor. The parties struck a balance which showed an amount owing to the solicitor. This account was not in writing and no detailed bill of costs was ever delivered. It was held that the solicitor could on these facts maintain an action for the agreed balance. Lord Alverstone, C.J., says at p. 470 :—

> "If . . . it consisted of entries on both sides, and that the parties agreed the amounts of those cross-claims, and a balance was struck, I think the action upon an account stated might well be supported. But if, on the other hand, there was no cross-claim by the defendant, and the statement of account merely consisted in the agreement of the amount of the solicitor's bill, then I think that that would not suffice."

Kennedy, J., draws the same distinction and specifically refers to *Scadding* v. *Eyles*, *supra*. The same rule would, it is submitted, apply where the objection to any one item was want of consideration or the like. Blackburn, J., continues his judgment in *Laycock* v. *Pickles*, *supra*, in these terms :—

> "It is not necessary, in order to make out a real account stated, that the debts should be debts in *præsenti*, or that they should be legal debts" (i.e., presumably recoverable at law). "I think equitable claims might be brought into account, and I am not certain that a moral obligation is not sufficient . . . ; subject to this, that where some of the items are such that, if they had been actually paid, the party paying them would have been able to recover them back as on a failure of consideration, the account stated would be invalidated."

Lord Atkin in *Siqueira* v. *Noronha*, *supra*, after quoting this passage *in extenso*, makes this comment on the meaning to be given to these last words : "By that must be meant, in view of many subsequent authorities, would be invalidated to the extent of those items which are objected to on that footing."

What then emerges ? Avoidance by mistake and fraud is, it is submitted, clearly possible, for these vitiating elements affect all simple contracts alike. But accounts stated of the contractual kind which we have been considering cannot be challenged on such grounds as that any one item is statute-barred (*Ashby* v. *James* (1843), 11 M. & W. 542), or not evidenced by writing (*Siqueira* v. *Noronha*, *supra*), or merely a promise founded on moral (that is, in law, no) consideration, or, indeed, upon any ground that could effectively prevent it being a legally recoverable debt if sued for alone.

The exception noted by Blackburn, J., in *Laycock* v. *Pickles* regarding defending on an item which could have been recovered by the defendant in an action by him for money paid for a consideration that has wholly failed is, of course, in no way inconsistent with what has been said above as to the inability of the defendant to defend as to one item on the ground that the promise on which the plaintiff is suing is not supported by consideration. Blackburn, J., is there saying that where the defendant has a substantive cause of action, viz., a claim for money paid for a consideration which has wholly failed, he is entitled to resist the account stated to the extent of saying that he is entitled to payment of that particular amount and therefore is entitled to say that he owes the defendant so much less than appears on the account. It is, in a sense, a set-off or cross-claim. It is wholly different for the defendant to resist payment of a particular item on the ground that there was no consideration. Here he is not making a claim, but seeking to escape the plaintiff's claim. And, as we have seen, his attempt will be unsuccessful since the cancelling of mutual debts affords a consideration which supports a promise to pay the balance.

The case of *Cocking* v. *Ward*, 1 C.B. 858, does present some difficulty. It decides that a plaintiff may succeed upon an account stated which does not consist of mutual debts in a case where the debt could not have been originally recovered since it was not evidenced by "a writing signed." Tindal, C.J., appears to think that the acceptance of the account is an acknowledgment sufficient to sustain the claim on an account stated. He also suggests that the moral obligation to pay could furnish the consideration. This latter suggestion is

clearly wrong. But it is interesting in that it indicates that he felt that there should be some consideration. It is difficult to reconcile this case with *Scadding* v. *Eyles*, *supra*, and with the judgments in *Siqueira* v. *Noronha*, *supra*. The difficulty is dealt with thus by the learned editors of "Smith's Leading Cases," 13th ed., Vol. I, p. 154 :—

> "It was by an application of the principle that a subsequent promise may give validity to a debt otherwise irrecoverable owing to some positive rule of law that effect was given to the count upon an account stated in *Cocking* v. *Ward* when the count upon the special agreement failed owing to the Statute of Frauds."

The case of *Evans* v. *Heathcote* [1908] 1 K.B. 418, is similarly explained in the same place. If this explanation be accepted, *Cocking* v. *Ward* does not proceed upon the account stated *qua* account stated, but upon the account stated *qua* acknowledgment reviving or validating the original promise.

Ashby v. *James*, 11 M. & W. 543, supports this view. There, there were cross accounts between A and B, but many of A's credits were more than six years old and therefore statute-barred. An account was taken verbally and an amount found to be due to A. It was held that A could recover in spite of the Statute of Limitations and Lord Tenterden's Act (requiring a written acknowledgment to defeat the operation of the Statute), on the ground that he was suing on an altogether fresh contract. Alderson, B., distinguishes clearly between this case of mutual accounts and one where there are debts on one side only. Here, there was a fresh consideration, and the plaintiff was not forced to rely upon a parole promise to pay the existing, but statute-barred, debt.

If one of the items in an account consisting of cross-claims is unenforceable by reason of the Gaming Acts, it is submitted that the defendant cannot avoid payment to that extent since new consideration has been furnished and the case would be brought within the principle of *Hyams* v. *Stuart King* [1908] 2 K.B. 696. There the defendant had promised to pay a racing debt in consideration of the plaintiff agreeing to hold over the cheque for a few days and to refrain from declaring the defendant a defaulter. This was held to be a valid and enforceable contract since there was good consideration for the fresh promise to pay. Further, the argument below on the question of illegal contracts is applicable to unenforceable contracts.

The matter is more difficult if one of the items represents a debt that has arisen by reason of an illegal contract. Sir Gorell Barnes, in *Hyams* v. *Stuart King*, doubted whether the position would have been the same if bets had been illegal. On the other hand, the striking of a balance, when there are debits on both sides, amounts to payment of such debits. Alderson, B., in *Ashby* v. *James*, *supra*, says :—

> "The truth is, that the going through an account, with items on each side, and striking a balance, converts the set-off into payments."

The money represented by the illegal contract is thus notionally paid, and to allow the defendant successfully to defend as to that amount would in effect be to allow him to recover back money paid on an illegal contract, which is impossible if the contract has been executed and both parties are *in pari delicto*. There is support for this view in *Owens* v. *Denton*, 1 C.M. & R. 711, where malt had been sold by B to A by an illegal measure (the hobbit). This had been followed by a settlement of accounts. In an action for work and labour by A, it was held that B was entitled to set off his demand for the malt. Lord Abinger, C.B., remarked in argument that if the malt had been paid for, the plaintiff could not have recovered the money back, and, giving judgment, said :—

> "The question here is, whether there has not been such a settlement of accounts between the parties as is equivalent to a payment. I think there has been such a settlement and that the parties are in the same situation as if payment in cash had been made."

Analogous to the account stated of the contractual kind is the agreed account referred to by Viscount Cave in *Camillo* v. *Alexandria Works*, 38 T.L.R. 134, at p. 143 :—

> "There is a third class of stated or agreed accounts comprising cases where a claim has been made . . . and the other party has for valuable consideration agreed to accept it as correct. The consideration may be a reduction of the claim, a consent to wait for payment . . . This is a real agreed account and according to English law cannot be reopened except for fraud or on some other ground which would enable a party to an agreement to have it set aside."

Liability on Marine Insurance Policies.

THE question whether a vessel had been cast away, with the connivance of the plaintiffs, has been considered in two recent cases. In *Maris and another* v. *The London Assurance* (79 SOL. J. 163), the claim was for £12,000 under a policy of insurance on the "Michael N. Maris." That steamer had been built at Port Glasgow in 1899, was bought from Italian owners in 1923, and had struck a rock in the Adriatic in July, 1932, while taking coal from Dantzig to Trieste. The plaintiffs' case was that the loss was a fortuitous casualty, e.g., a miscalculation as to the bearings, deflection from course by currents, or magnetic disturbance of the compass. The defence was that, although the weather was foggy, the steamer was driven on to the reef on purpose, and it was pointed out that one plaintiff was captain, and owned 80/100 of the vessel, while the other plaintiff was chief officer and owned the other 20/100 of the vessel. There was thus a strong financial motive for desiring her loss, and no sufficient efforts were made to save the vessel, after she struck. Mr. Justice MacKinnon (sitting with a nautical assessor) accepted the view that, although there must be a strong presumption against the commission of so criminal an act as the wilful throwing away of a ship, yet if the matter was left uncertain (as between that explanation and a fortuitous explanation of the loss) the onus of proof was on the plaintiff. The problem therefore was, had the plaintiffs established a fortuitous casualty, or was there so much probability of intentional sinking that neither party would be said to have clearly established its case ? As against the grounds of defence, there were circumstances supporting the plaintiffs' case, e.g., the boats were not ready for launching, the crew did not save their belongings, and there was no marked discrepancy between the versions of the plaintiffs' witnesses. The learned judge observed that the vessel was only worth about £2,000 or £3,000, and by insuring her for £12,000 the defendants had almost invited a casualty. It was, nevertheless, held that the plaintiffs had made out their case, and judgment was given in their favour, with costs.

A case on the other side of the line was *Grauds and another* v. *Dearsley* (1935), 79 SOL. J. 271, in which the plaintiffs failed to prove a fortuitous loss, and the defence of scuttling prevailed. A further question then arose, viz., whether the owner, who was not privy to the casting away, could recover under the policy of insurance. The evidence was that the s.s. "Evermore" had been registered in the name of the female plaintiff (a Latvian), to whom the legal ownership had been transferred in 1927 from her husband, the male plaintiff. The female plaintiff had insured the vessel on the 8th January, 1933, by a Lloyd's policy, subscribed by the defendant. While on a voyage from Italy to Holland, with a cargo of iron ore, the "Evermore" foundered in the Bay of Biscay on the 9th April, 1933. The plaintiffs' case was that the loss was caused by an explosion, within the meaning of the policy, but the defendant contended that the "Evermore" was cast away with the connivance of the plaintiffs. The latter denied any knowledge of the ship having been cast away, but in that event they claimed for a loss by barratry.

Mr. Justice Talbot observed that the evidence from other ships (which had answered the S.O.S.) was that the ship was lost on a moonlight night in a calm sea; that she sank on an even keel, with no danger to the crew, who calmly waited for their ship to sink before boarding the rescuer. It was held that the captain and chief engineer were in a plot to sink the ship, which had been cast away. On the further question, viz., whether the plaintiffs were parties to the plot, it was pointed out that the captain had no quarrel with the owners, and had nothing to gain by sinking the ship himself. There was therefore no evidence of barratry, and the facts showed that the ship was cast away with the connivance of the male plaintiff. There then remained the question whether the female plaintiff could recover, but she had never exercised the rights of ownership, and did not receive the profits of the ship. The captain was not appointed by her, and she admitted that any insurance money recovered would be handed over to her husband. As the female plaintiff did not exercise her right to possession and control of the ship, the acts of her husband were taken to be her own. As neither of the plaintiffs could recover, judgment was given for the defendant, with costs.

This decision was in accordance with an old principle, first established in *Hobbs* v. *Hannam* (1811), 3 Campbell 93. The plaintiff owned the ship "Jane," which, having been chartered to one Woodman, was also insured with the defendant for £3,600, "at and from Rio Janeiro to any port in the River Plate." From Rio the ship was sent to Buenos Ayres, where the captain was to take orders from the charterer's partner. The latter, however, sent smuggled goods on board, for which the ship was seized and condemned by the Spanish Government. The defendant denied liability on the policy, on the ground that the loss had arisen directly from the act of the insured—for which the underwriters were not liable. The plaintiff, however, contended that the loss was due to barratry, as the ship had sailed without a licence from the South Sea Company, and the captain should therefore have refused to go to Buenos Ayres. His act in going on an illegal voyage was barratrous, as he had not acted in obedience to the owner of the ship, which was then under charter. Lord Ellenborough, C.J., held that the loss was to be imputed to the plaintiff himself, as the dominion of the ship was given to a charterer, whose acts were those of the plaintiff. The charterer's partner at Buenos Ayres was therefore, in law, the agent of the plaintiff, and the loss arose from the captain following what were in effect the plaintiff's own orders. The allegation of barratry accordingly failed, and the plaintiff was non-suited.

Company Law and Practice.

Directors and their Remuneration.

THE position of directors *quoad* the company of which they are directors is a peculiar one, and has been discussed almost *ad nauseam*. Probably the best brief definition of their relationship to the company is to say that they are managing agents, but this definition is too short to be regarded as satisfactory. Their relationship is certainly of a fiduciary nature in some respects, and it is out of this fiduciary relationship that the rule that a director is not entitled to remuneration for his services (to which further reference will be made shortly) springs.

But such fiduciary relationship as there is arises only between the directors and the company, and not between the directors and individual shareholders in the company; hence, we get a case such as *Percival* v. *Wright* [1902] 2 Ch. 421, which shows that directors may use information known to them as directors of the company to their advantage, and may deal in the company's shares with other shareholders, though they have information which enables them to formulate a better idea of the true value of the shares than the persons with whom they are dealing. But beware, as always, of treating this as an authority of too general an application; circumstances alter cases, and if there were any suspicion of fraud the result would doubtless be the other way.

Directors are not servants of the company; they are under no obligation, *qua* directors, to give the company the benefit of their services—they may absent themselves from board meetings for as long as they please, and continue to draw their fees; they can go and live in the Antipodes, and no one can say them nay. Of course, if they persist in this course of conduct they might well be removed from office, either by extraordinary resolution, if the articles permit, or by special resolution. Further, many articles provide for automatic vacation of office after absence from board meetings for a certain period. In suggesting that directors may stay away from board meetings without any risk to themselves, one might perhaps just say that circumstances can be imagined in which directors would find themselves in danger. Thus, an agreement by all the directors to refrain from attending board meetings might amount to a wrong actionable at the suit of the company.

The chairman of the board is similarly situated. The articles usually confer upon him the power of presiding at meetings of the board and of the company, and of exercising a casting vote. But he is not obliged to do any of these things, and if he refuses to do so no one can complain, at any rate where the company has articles of association of a usual kind.

It follows, as I have said, from the fiduciary nature of the relationship between a director and his company that he is not entitled to any remuneration for acting as director, unless under the constitution of the company he can claim it. A director cannot sue on a claim under a *quantum meruit*. It will be borne in mind that what I am saying has reference only to a director *qua* director; he may have, as is very frequently the case, some contractual obligation with the company which compels him to render services and confers upon him the right to remuneration in some capacity other than director.

Before passing, however, to a further consideration of how directors may be remunerated, it may be useful just to remind ourselves, as shortly as possible, of the statutory provisions relating to disclosure of remuneration. These, it will be remembered, are of recent introduction; whether they are really of any practical value is debatable; certain it is that by the exercise of a little ingenuity they can be rendered not very inquisitorial.

The first relevant section is s. 128, which requires the disclosure in the company's annual accounts of the total paid to the directors as remuneration for their services, including sums paid by subsidiary companies. Managing directors, however, are excluded from the purview of this section, as are also any sums paid to directors who hold salaried employments under the company in respect of such salaried employment.

The next relevant section is s. 148, which requires a disclosure on requisition by members entitled to not less than one-fourth of the total votes. Here again it is sufficient to state the aggregate sums payable, and the requisition can be rendered nugatory by an ordinary resolution of the company in general meeting passed within one month of the requisition. This is perhaps a suitable place to add that, by virtue of para. 3 of the Fourth Schedule to the Companies Act, 1929, any provision in the articles of association as to the remuneration of directors must be stated in a prospectus.

But to return to the original proposition about directors' remuneration; it is more than a hundred years ago since it was laid down by the court that directors are not entitled to remuneration as such: *Dunstan* v. *Imperial Gas Co.* (1832), 3 B. & Ad. 125. However, there are probably not many

people who would allow their names to go forward as candidates for a directorship unless some financial advantage was likely to accrue to them as a result of their appointment; and it is usual, and indeed, one may safely say, almost universal, to provide for the remuneration of directors.

Such provision is usually made by the articles, and probably the two commonest forms of article are those which provide for the remuneration of the directors being fixed by the company in general meeting (see, for instance, cl. 65 of Table A) and those which actually fix the remuneration at either so much per director, or a particular sum to be divided among the directors. It is not, however, essential for the articles to contain provisions as to remuneration; if the constitution of the company is silent on the point the company in general meeting may vote remuneration to the directors, but remuneration so voted is only a gratuity, and can only be voted out of profits.

In *Re George Newman & Co.* [1895] 1 Ch. 674, the judgment of the Court of Appeal (consisting of Lord Halsbury, Lindley, L.J., and A. L. Smith, L.J.) contains, at p. 686, the following instructive passage:—

> "The shareholders, at a meeting duly convened for the purpose, can, if they think proper, remunerate directors for their trouble or make presents to them for their services out of assets properly divisible among the shareholders themselves. Further, if the company is a going concern, the majority can bind the minority in such a matter as this. But to make presents out of profits is one thing, and to make them out of capital or out of money borrowed by the company is a very different matter. Such money cannot be lawfully divided amongst the shareholders themselves, nor can it be given away by them for nothing to their directors so as to bind the company in its corporate capacity."

A fortiori directors have no power, unless authorised in that behalf by the constitution of the company, to vote themselves remuneration; quoting again from the judgment cited above: "Directors have no right to be paid for their services, and cannot pay themselves or each other, or make presents to themselves out of the company's assets, unless authorised so to do by the instrument which regulates the company or by the shareholders at a properly convened meeting."

It should be noted that, though in cases where the company in general meeting votes a gratuity, such gratuity is payable only out of profits, directors' fees under the usual forms of article, not being gratuities, are payable out of the funds of the company, whether or not there are profits to pay them. Questions of income tax have sometimes arisen in connection with directors' fees; thus, in *Boschoek Proprietary Co. Limited* v. *Fuke* [1906] 1 Ch. 148, the board passed a resolution to the effect that a particular sum of money, being income tax on the managing directors' fees, should be paid out of the funds of the company. "This transaction," says Swinfen Eady, J., at p. 162, "was, in my opinion, quite unjustifiable. Even if the board had been duly constituted (there was a question as to this which arose in the action) it would have had no right whatever to take out of the company's moneys the sums which each director ought to pay out of his own money for any income tax properly payable by him. The defendants are jointly and severally liable for this misapplication of the moneys of the company, and must repay the amount with interest."

Another minor point of some interest arises in connection with travelling expenses. It is advisable to see that the articles of association of every company contain a provision that the directors are to be allowed their expenses of travelling to and from board meetings out of the assets of the company; that is, of course, unless it is not desired that the directors shall have this concession. In the absence of some such provision, the directors must bear their own expenses of attendance at board meetings: *Young* v. *The Naval Military & Civil Service Co-operative Society of South Africa Limited* [1905] 1 K.B. 687.

A Conveyancer's Diary.

Foreign Law Applied to Matrimonial Contracts.

I DO not think that any conveyancer feels confident in straying into that "no man's land" of Conflict of Laws. The pitfalls are manifold. However, as it happens that I have had to consider this question recently as to the construction of marriage contracts when the parties are of different nationalities, I propose to draw attention to what seem to be the established principles adopted by the courts in this country.

The general rule is that a marriage contract or settlement is to be construed in accordance with the law of the matrimonial domicil, that is, the law of the husband's domicil.

That rule is subject to exceptions which in a great many cases makes it inoperative.

In the first place, the rule does not apply when there is an expressed intention that the contract or settlement shall be construed according to the law of some country other than that of the matrimonial domicil. I need not dwell upon that except to remind the reader that it is always desirable in such cases to insert a clause stating by the law of what country the contract or settlement is to be construed.

In the absence of any expressed provision there are two factors which seem to govern the question. One is the nature and situation of the property which is the subject of the settlement and the other the form in which the settlement is drawn.

It will be best to illustrate the law by reference to some of the most important decisions.

First, there is a case (which is very interesting apart from the immediate question that I am considering), *Viditz* v. *O'Hagan* [1900] 2 Ch. 87.

The facts in that case, shortly, were that prior to the marriage in 1864 of an Irish lady, under twenty-one, with an Austrian, marriage articles in English form were executed by her and her intended husband, by which it was declared and agreed by and between the parties thereto that in case the marriage should take place, the then personal property and certain after-acquired personal property of the lady should be vested in trustees upon the usual trusts of an English marriage settlement. After the marriage the husband retained his Austrian domicil. In 1880 a settlement in English form, which purported to be made in pursuance of the articles, was executed by the husband and wife.

It was held by Cozens-Hardy, J., that the marriage articles were valid and were governed by English law.

That, so far as my present purpose is concerned, is sufficient. The articles and the subsequent settlement were in English form, which showed an intention that the documents were to be construed and take effect in accordance with the law of England.

It is something of a digression, but an interesting one, to note that the actual decision in that case was overruled by the Court of Appeal, but not upon the point of construction with which I am dealing. The lady was an infant, and according to the law of this country the settlement was voidable by her upon her attaining twenty-one years of age. If she did not repudiate it within a reasonable time, the settlement became binding. It appeared, however, that under Austrian law the settlement could be revoked at any time by the husband and wife, notwithstanding the birth of issue and acts of ratification, and that the right of revocation could not be waived and was not lost by lapse of time.

The Court of Appeal held, overruling Cozens-Hardy, J., in these respects, that (1) inasmuch as upon her marriage the wife acquired the Austrian domicil of her husband and became subject to Austrian law, she never could ratify the settlement or deprive herself of the right to repudiate it, the result being that she never had the power, either before or after her marriage, of making an irrevocable contract, and (2) the English doctrine that the voidable contract of an infant bound him if he did not repudiate it within a reasonable time after he attained twenty-one had no application, and (3) the

wife was not bound by the marriage articles or by the settlement.

The decision of the Court of Appeal did not affect the question as to the construction of the settlement, but went only to the right of the wife with the concurrence of the husband to revoke it. So long as the settlement stood, it was to be construed in accordance with the law of England, because it was in English form, and inferentially, therefore, to be construed in accordance with the law of England.

The next case to which I must refer is *Re Fitzgerald: Sarman* v. *Fitzgerald* [1904] 1 Ch. 573.

On the marriage in Scotland of a domiciled Englishman with a domiciled Scotswoman, the wife's property, which consisted mainly of Scots heritable bonds, was settled by a marriage contract executed in Scotland in Scots form. By that contract the trustees, most of whom were domiciled Englishmen, and were also trustees of a contemporaneous settlement of the husband's property in English form, were to hold the wife's property, upon trust, in case the husband should survive the wife, to pay the income to him during his life, declaring that all payments to him " shall be strictly alimentary and shall not be assignable nor liable to arrestment or any other legal diligence at the instance of his creditors." The husband survived the wife, having mortgaged his life interest under the Scots contract to mortgagees in England. He had always retained his English domicil.

By the law of Scotland such a restricted life interest, so far as it does not exceed a reasonable provision, is valid as against creditors other than " alimentary " creditors, and in such a case, if the husband fails to maintain the children of the marriage, they are entitled to attach the alimentary provision made for him.

It was held that, having regard to all the circumstances, and particularly to the nature of the limitations in the Scots contract, it must be taken to have been the intention of the parties that that contract should be governed, not by the law of the English matrimonial domicil, but by the Scots law, and that the " alimentary provision " to the husband being valid by that law, must be treated as valid by the English courts, and consequently as valid against the husband's mortgagees.

The judgment of Cozens-Hardy, L.J., in that case covers the whole ground of the subject. It will be sufficient if I quote a short paragraph from it : " As a general rule the law of the matrimonial domicil is applicable to a contract in consideration of marriage. But this is not an absolute rule. It yields to an express stipulation that some other law shall apply. It is not necessary that there should be an express stipulation. It is sufficient if the court arrives at the conclusion that the parties in fact contracted with reference to some law other than that of the matrimonial domicil."

It may be mentioned in connection with that case that not only was the settlement in Scots form, but the property settled was, for the most part, Scottish property. It would appear, however, that even if the settled property had been in England, the law of Scotland would have applied having regard to the form of the settlement.

There is one other very interesting case to which attention may be drawn.

In *Re Hewitt's Settlement: Hewitt* v. *Hewitt* [1915] 1 Ch. 228, it transpired that there was a settlement which was in Scots form and dealt with interests under a prior settlement of property in Scotland which was also in Scots form. At the time when the matter came before the court, all the trust funds were invested in English securities, and all the beneficiaries and the trustees were in England. The trustees desired to retire and to appoint the Public Trustee to be the trustee of the settlement.

It was held, in effect, that as the settlement was in the first place of Scottish property and was of Scottish immovable property, the Public Trustee could not accept the trust.

The argument of my late learned friend Mr. Dill in that case is well worth studying.

Landlord and Tenant Notebook.

Mesne Tenant's Covenant to Observe Covenants in Head Lease.

When an underlease demises the whole of the premises demised by the head lease and substantially repeats its covenants, there is no occasion for the undertenant to ask the mesne tenant to observe those covenants except with regard to the payment of rent. Indeed, it is usually the undertenant who is then called upon to observe the covenants of the head lease, and it is probably this type of underlease which was present in the mind of the writer of a passage in " Woodfall " (23rd ed.) : " A sub-lease should always contain an express covenant by the sub-lessee to observe and perform all the covenants and conditions in the original lease, except those which he is specially exempted from performing." The exception no doubt provides for cases in which the mesne tenant undertakes to do some or all of the repairs which he is himself liable to do under the head lease ; but I see that a footnote in " Prideaux's Precedents " (22nd ed.) says : " Where the sub-lessor is himself a lessee and has covenanted with the ground landlord for insurance, it is generally more convenient that he and not the sub-lessee should see to this, the latter paying an additional rent equal to the premium." In fact, text-books and works on precedents pay a good deal of attention to protecting mesne tenants, and, with the exception of " Walford's Practical Hints on Draft Leases," show but little concern with the plight of an undertenant whose interest may be jeopardised through the default of the mesne tenant.

I should say, however, that if Woodfall's work does not dwell on the desirability for an undertaking of this kind to be entered into by a mesne tenant in apt circumstances, one of the forms in Appendix B shows that the matter has received some consideration.

The desirability was made manifest by the decision in *Kelly* v. *Rogers* [1892] 1 Q.B. 910, C.A., when an ex-undertenant, who had held and been ejected from one of two houses in consequence of the mesne tenant's failure to repair the other, sued the mesne tenant for breach of an express covenant for quiet enjoyment. But, that covenant being in the usual " by, through or under " form, there was no case.

Of course, protection could be afforded to sub-tenants by means of a more comprehensive covenant for quiet enjoyment, but I think that a separate covenant would more eloquently express what was meant, and I notice that the Encyclopædia of Forms and Precedents contains a form under which the mesne lessor promises " to pay the rent reserved by and perform (so far as the [sub-] tenant is not liable for such performance under the [sub-] tenant's covenants) all the lessee's covenants contained in the head lease," and goes on to deal with the matter of fire insurance by the mesne lessor, giving the undertenant a right to see policy and last receipt for premium, and a right to have insurance money applied in rebuilding.

An express covenant for indemnity suggests itself ; but in view of the authority of *Hornby* v. *Cardwell ; Hanbury, Third Party* (1881), 8 Q.B.D. 329, C.A., when a sub-tenant's covenant to perform the covenants of the head lease was held to have this effect, perhaps it is not necessary.

While there has been no decision actually interpreting a mesne tenant's covenant to observe the head lease covenants, it has been decided that such a covenant belongs to the class of those which " run with the land " : *Dewar* v. *Goodman* [1909] A.C. 72; and those interested in draftsmanship will find in the report of that case when heard at first instance—[1907] 1 K.B. 612—a most elaborate precedent. It is also worth observing that the damages awarded amounted to £154 11s. 6d., which shows that an evicted undertenant, though relieved of his liabilities, may have something to complain of.

Indeed, as Stirling, L.J., remarked in the course of his judgment in *Hand* v. *Blow* [1901] 2 Ch. 726, C.A., "if the terms of the head lease are more onerous than the sub-lease, the sub-lessee may be exposed to unpleasant consequences"; and while the mesne tenant's covenant was probably devised to meet the case of an underlease of part of the premises (in *Dewar* v. *Goodman*, *supra*, the head lease demised 211 dwelling-houses, 209 of which were found to be in disrepair), there are, nowadays, many cases in which, as the result of bargaining, tenants have been constrained to sub-let all they hold without passing on to sub-tenants all the burden imposed by their (head) leases.

While an undertenant may, on the forfeiture of the head lease, be able to obtain a vesting order, and such an order is not likely to be refused when the mesne tenant is alone to blame, the expense of complying with its conditions in the matter of remedying defects and paying costs is usually a serious consideration, so that the consequences are still unpleasant.

There is one point in particular to which it is desirable that draftsmen should turn their attention. Suppose that part of premises be sub-let, as was mentioned in *Hand* v. *Blow*, *supra*, on less onerous conditions than those of the head lease, but that the mesne lessor covenants to observe the head lease covenants so far as the sub-tenant is not liable under the latter's covenants; can the sub-tenant call upon the mesne lessor to perform the difference? Thus: A grants B a lease of a building, B covenanting for good and substantial repair, for painting of exterior and interior at specified intervals; B lets C one floor, C covenanting to keep the interior, B covenanting to keep the exterior, in good and tenantable repair, while B further covenants with C to observe the covenants in the head lease, except, etc. Could C call upon B to paint at the specified time, if A acquiesced in B's not painting?

The answer would depend on the way in which the underlease was drafted. If in its proper position and properly worded, the covenant to observe the head lease covenants would be construed as merely an undertaking to protect the under-tenant from forfeiture of the head lease; this, I think, would be the correct construction if it were in juxtaposition to a covenant for quiet enjoyment, and also dealt with the payment of the rent under the head lease. If it followed the tenant's covenant to repair, it might be taken to be an example of draftsmanship by reference; to save copying, parties have cited another instrument. But I consider that the presumption would be in favour of the other interpretation, which would leave the mesne tenant free to take advantage, as he is entitled to, of the superior landlord's acquiescence; or to negotiate with the superior landlord on the footing that it is the sub-tenant's estate, not the decorations, that must be looked after.

Our County Court Letter.

DAMAGE BY RUNAWAY CATTLE.

In *George Whitfields* (*Wolverhampton*) *Limited* v. *Oliver*, recently heard at Kidderminster County Court, the claim was for £11 19s. as damages for negligence. The plaintiffs' case was that twenty-four sheep were being unloaded at the defendant's shop, when one of them escaped, and—seeing its reflection in the window of the plaintiffs' shop—it charged and smashed the window. There was only one man in charge, and no dog, and it was contended that the lorry should have been driven into the defendant's entry. The defendant's case was that the lorry was a double-decker, which could not go down the entry, and the sheep were unloaded (by means of a sliding ramp) by two men. This had been done every Sunday morning, since January, without previous accident. His Honour Judge Roope Reeve, K.C., observed that trespass alone gave no right of action, and no special negligence was alleged, on the particular day. Therefore, the question was whether the method of unloading rendered the defendant liable for negligence—in the event of an accident. Both parties had relied upon *Tillett* v. *Ward* (1882), 10 Q.B.D. 17, but in those days the only method of transporting cattle was by driving them along the highway. That might one day be held to be a nuisance, as the modern method was to transport cattle by motor lorry. The defendant's method had been followed, without complaint by the police, for several months, and his precautions appeared to have been sufficient. The fact that one sheep took an unprecedented course, viz., running down the street, was therefore no evidence of negligence. The defendant was within his rights, in using the highway in such a manner, and judgment was accordingly given in his favour, with costs. Compare a case, noted under the above title, in the "County Court Letter" in our issue of the 23rd March, 1935 (79 Sol. J. 209).

THE REMUNERATION OF ADVERTISING CONTRACTORS.

In two recent cases at Burton-on-Trent County Court (*Bernard Lewis, Ltd.* v. *Wileman*; *The same* v. *Tagg*) the claims were for £19 10s. and £6 10s. respectively, as the price of advertisements. The plaintiffs' case was that in September, 1933, they agreed to supply 500 copies of a map of the district to Messrs. John German & Son, estate agents, of Burton. In consideration of this the estate agents undertook to supply, to advertisers on the map, the names and addresses of incoming tenants in the district. The plaintiffs' canvasser then called on the defendants, who signed contracts for their names to be inserted on the map folios, at fees of 2s. 6d. and 7s. 6d. a week respectively. The defendants contended that they were induced to sign by the misrepresentation of the canvasser, who falsely stated (1) that he came from the Derby office of Messrs. John German & Son, and (2) that the latter firm would guarantee a certain amount of work per week to the advertisers. His Honour Judge Longman, in a reserved judgment, observed that the contracts would require some inducement to make them a business proposition at the price of £39 and £13 respectively. He was satisfied that the misrepresentations were made, as the allegation to that effect was made promptly, and not at or just before the trial. On discovering the facts, Messrs. John German & Son had protested to the plaintiffs against the contracts and the excessive charges thereunder. Judgment was given for the defendants, with costs.

WIFE'S LIABILITY FOR HUSBAND'S DEBTS.

In the recent case of *Avent* v. *Phillips Lamps, Ltd.*, at Bournemouth County Court, the claim was for the return of certain goods, seized under an execution. The respondents had obtained judgment against the claimant's husband, who had traded as a radio retailer (as "Joy's Radio Salon") until the 24th May. On that day the claimant bought the business (out of her own money) for £175, for which she obtained a receipt, and changed the name to "Joy's Radio Electric"—her daughter's name being Joy. There was no partnership between her husband and herself, and she had destroyed the original notepaper, besides reconstructing the interior and converting one window into a cigarette kiosk. All goods had since been ordered in the name of the claimant, and her husband was now trying to obtain work in London. The respondents pointed out that there was no written assignment of the lease to the claimant, who previously traded in gowns and radio as Frederica Pates. She furthermore admitted that she had put £200 into her husband's other radio business at Cheltenham, which was also in financial difficulties. His Honour Judge Hyslop Maxwell observed that there were suspicious circumstances about the transaction, but he accepted the claimant's evidence, and gave judgment in her favour, with costs.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Car Driven by Friend.

Q. 3239. I have read with interest an article published in Vol. 78, p. 827, of your journal, entitled "Car driven by Friend." What is the position if a wife is being driven in her husband's car, the driver being her daughter who is of age —can she claim damages for personal injuries from her husband as being the person retaining the right and power of controlling the manner in which the car is to be driven? I shall be glad to have your views.

A. The wife could not claim damages for personal injuries from her husband, as the claim would be in tort, and this is barred by the Married Women's Property Act, 1882, s. 12. If the wife paid under her own doctor's bill, she might sue her husband in the exercise (under the above section) of a civil remedy for the protection and security of her own separate property. The husband's insurance company might thus be persuaded to pay the wife's doctor's bill and nursing expenses, but she could recover nothing for pain and suffering.

Mortgage of Tied House.

Q. 3240. In January, 1934, A & Co., a firm of brewers, lent £2,000 to B on the security of "Greenacre Inn." By a collateral agreement made between the same parties it was agreed that in consideration of the loan, and during the continuance of the loan, B guaranteed a cask beer trade of 150 barrels per annum on usual free trade terms. In May, 1935, B offers to pay off the mortgage, together with interest in lieu of notice. It is contended by A & Co. that they are under no obligation to accept this interest in lieu of notice, but that they are entitled to the benefit of the "trade" during the six months. In view of the fact that A & Co. did in fact obtai n a definite advantage in addition to interest, can this contention be substantiated?

A. A & Co. were not entitled to refuse the interest in lieu of notice. If they do so refuse, B can bring an action for redemption of the mortgage. The "tie" with regard to the purchase of beer exclusively from A & Co. is only valid so long as the mortgage subsists. After redemption the covenant is a clog on the equity, and the benefit cannot be claimed by the mortgagees, A & Co. See *Noakes* v. *Rice* [1902] A.C. 24.

Conversion of Wireless Set.

Q. 3241. A, a wireless dealer, alleges that he gave B possession of a wireless set for the purpose of demonstration. B sells the set to C, and sends a cheque to A for the price of the set, less commission. A accepts the cheque and presents it, but it is returned marked "R.D." A then institutes criminal proceedings against B, who is arrested and pleads guilty to the charge of "larceny as a bailee." An order for the restitution of the wireless set is then made by the magistrate against C. C, though aggrieved, returns the set to A, but considers that the fact of A's presenting the cheque makes B not merely a bailee but a mercantile agent; whereby B could pass a good title to the wireless set. It is considered that B should not have pleaded guilty to "larceny"—he was only guilty of "conversion"; an offence under which the magistrates have no power to order restitution.

Will a civil court, in an action by C against A for conversion, ignore the conviction and restitution order, and order the return of the goods or their value? If not, what, if any, are C's remedies? The facts are very similar to those in *London Jewellers Ltd.* v. *Attenborough* [1934] 2 K.B. 206.

A. A would have a good defence to an action for conversion at the suit of C, as A is in possession under the authority of an order of a competent court. A civil court could not ignore the conviction and restitution order, as this would be tantamount to sitting as a court of appeal from the magistrate. C appears to have no remedy, unless he can persuade B to appeal against the conviction and restitution order.

Chairman of Company Meeting.

Q. 3242. A and B (husband and wife) possess between them 50 per cent. of the shares of X Co., Ltd. C (sister-in-law and widow of A's deceased brother) now holds the remaining 50 per cent. of the shares. According to the articles of association and Table A, on a vote being decided by a show of hands, A and B can defeat C, but by demanding a poll, C can equal A and B and so prevent a majority. The Companies Act provides for the appointment of a chairman at general meetings, and by the operation of s. 52 of Table A such chairman is given a casting vote in the case of an equality of votes of members. Therefore, whichever of A, B or C is appointed chairman, that person obtains full control of the meeting. The annual general meeting is soon to be held and many matters will be in issue in which A and B will be ranged against C. Therefore, it is essential that C should not allow either A or B to be appointed chairman of the meeting. On the other hand, A and B will certainly not consent to the appointment of C. I am unable to find any authority as to whether the provisions of the Companies Act are obligatory or merely permissive so far as they relate to the appointment of a chairman. I shall be pleased to have your views (with authorities, if any) on the following:—

(*a*) If there is no agreement to the appointment of a chairman, can the meeting still be held without one?

(*b*) If a chairman is essential for the meeting to proceed, is there any precedent for the parties effecting a compromise by appointing joint chairmen (i.e., one from each side) so as to neutralise the value of the casting vote.

A. The provisions of the Companies Act, 1929, are obligatory so far as they relate to the appointment of a chairman. See, for example, the word "shall" in Art. 48 of Table A. On the questions put—

(*a*) If there is no agreement to the appointment of a chairman, the meeting cannot be held without one. The chairman is an essential part of the scheme of the Companies Act, as he occupies a quasi-judicial position in the domestic tribunal of the company.

(*b*) There is no precedent for the compromise of appointing joint chairmen, and such a method (if adopted) would not surmount the difficulty. The joint chairmen would still have to give a joint decision, and (as they would doubtless be appointed one by each of the opposing interests in the company) they are no more likely to agree than the shareholders themselves.

In the event of the deadlock continuing, there is no alternative but to wind up the company, or sell the business as a going concern. See *Yenidje Tobacco Co.* [1916] 2 Ch. 426; *Loch* v. *John Blackwood, Ltd.* [1924] A.C. 783. A solution might be found by referring the matters in dispute for decision by an arbitrator, acceptable to all the shareholders.

To-day and Yesterday.

Legal Calendar.

14 October.—On the 14th October, 1714, Sir Thomas Powys was dismissed from his position as a Justice of the King's Bench, after a short term of service.

15 October.—On the 15th October, 1872, Sir Roundell Palmer succeeded Lord Hatherley as Lord Chancellor. Three days later, he was raised to the peerage as Baron Selborne. To him fell the tremendous task of judicature reform upon which a royal commission had already reported, and very effectively he tackled the problem, although his own inclination to even more sweeping changes was thwarted by public opposition. As a judge, his most evident characteristic was a reverence for precedent. Though not so great as Cairns or Jessel, he could penetrate to the core of a case and contributed ably to the development of equity.

16 October.—On the 16th October, 1817, there opened at Derby, before Lord Chief Baron Richards, the trial of Jeremiah Brandreth, called "the Nottingham Captain." The charge was one of high treason, and the accused, who was a labourer, had put himself at the head of a very serious attempt at insurrection. A force of 500 men armed with swords, pistols, clubs and bludgeons had assembled at Southwingfield, in Derbyshire, and marched on Nottingham, pillaging houses for arms as they went. Their numbers dwindled, however, and on the approach of the yeomanry they dispersed. Brandreth was found guilty, sentenced to death and hanged.

17 October.—On the 17th October, 1892, Dr. Thomas Neill Cream stood in the dock at the Old Bailey, before Mr. Justice Hawkins, charged with murder. Having returned to England after a disgraceful career in America, he had taken a room in Lambeth, and for about a year his favourite recreation had been picking up the acquaintance of "ladies of the town," finding some medical pretext to administer to them a strychnine pill, and then leaving them to die in agony. The indictment charged him with the murder of four women, and the attempted murder of a fifth. He was convicted and hanged.

18 October.—On the 18th October, 1910, the trial of Dr. Crippen opened at the Old Bailey. Lord Chief Justice Alverstone was the presiding judge. Sordid and dreadful as was his crime in the killing of his wife and the disposal of her remains, his trial brought out in his conduct great and heroic qualities. Everyone who came in contact with him in prison looked upon him, not only with respect, but with something like affection. At that time his sole anxiety was the welfare of Ethel Le Neve. After a five days' hearing, the jury took twenty minutes to find a verdict of "Guilty." He protested his innocence.

19 October.—On the 19th October, 1774, "the new Sessions House in the Old Bailey was opened for the trial of prisoners. In it is a large room appropriated for the use of the witnesses, to prevent their standing in the yard, exposed to the inclemency of the weather or being at public-houses, and they are to be sent for when wanted to give evidence." The deadly effects of the insanitary state of Newgate had at last goaded the conscience of the Corporation into deciding on a complete rebuilding. But it was a long time before all was done.

20 October.—On the 20th October, 1309, the trial of the English Knights Templars began before the Bishop of London and the Papal inquisitors. They absolutely denied the charges brought against them and their Order and, for the first time in England, torture was resorted to to extract confessions of guilt. But it was of no avail and only certain hearsay statements were collected, which, though worthless, gave the Crown an excuse to seize their property.

The Week's Personality.

Only once in England have two brothers sat on the Bench together, and the conjunction was not a success. Lyttleton and Thomas Powys came of an old Welsh family settled in Shropshire. Both studied at Lincoln's Inn and, though neither had much eminence in legal attainments, both achieved legal honours. Thomas, the younger, scored first, becoming Solicitor-General and later Attorney-General under James II. The Whig Revolution closed his line of advance, and his brother Lyttleton stole a march on him by taking up arms with three servants for William of Orange, whose declaration he read aloud at Shrewsbury. He was rewarded with a knighthood and a King's Bench judgeship. For the whole of this reign, Thomas was out of official work, but, under Queen Anne, his fortunes revived, and eventually, in 1713, he joined his brother in the Queen's Bench. But his judicial career was short. A year later Anne was dead and George I was on the throne. At the instigation of Lord Chancellor Cowper, Thomas was dismissed. The reason is interesting. "The 2 Brothers generally act, in those maters, in oposition to ye Ch. Justice and Mr. J. Eyres . . . Sr Littleton, ye elder Bro, is a man of less abilitys and consequence, but blameless. Sr Tho. of better abilitys, but more culpable; having been Attorny General to ye late K. James to his abdication, and zealously instrumental in most of ye steps wch ruind that Prince . . . "

A Palace of Justice.

The United States Supreme Court has just been housed most handsomely at Washington in a dazzling white structure which cost £2,000,000. Its Corinthian vastness encloses every luxury, including a laundry where dirty linen will not be washed in public. London lawyers may well draw odious comparisons between this veritable palace of justice and that egregious "grave of modern gothic" in which, at a cost of two and a half millions, G. E. Street, R.A. entombed British Themis. I believe it was in the old Supreme Court at Washington that an Irish litigant, who had been finally non-suited, noticed the words "Truth," "Temperance," "Prudence" along with the names of other virtues inscribed on the pavement. When he came to "Justice" he stopped and, looking down, exclaimed: "Is it here yez are? I knew well you were dead, but I never knew before where you were buried." The remark recalls an observation of the late M. Briand, when he was shown an allegorical group destined for the Cour de Cassation, representing Justice embracing Law. He said: "Before separating, Law and Justice are kissing each other good-bye. Perhaps they will never meet again."

City Justice.

At a recent dinner at Cutlers' Hall, Capt. G. S. Elliston, M.P., Past Chairman of the Law and City Courts Committee of the Corporation, and Mr. Cecil Whiteley, K.C., the Common Serjeant, spoke with satisfaction of the good administration of justice within the City of London and of the excellent work done on behalf of convicted prisoners at the Old Bailey. They had reason, for such things are not a matter of course. Once upon a time, even acquitted persons had to pay money, "as from ancient times has been the usage," before they were let out of Newgate. This was forbidden in 1732, but not effectively stopped till 1774, after which acquitted prisoners were no longer returned to the cells till their friends had settled the gaoler's account. "The Beggar's Opera" reminds us that the weight of fetters depended on what a prisoner could pay for "easement of irons." Everyone was in the conspiracy to fleece guilty and innocent alike, but in 1638 Sir Francis Mitchell, a Justice of the Peace for Middlesex, went too far and got into trouble for taking £40 a year on condition that he committed all his prisoners to Newgate.

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of The First of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association.

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The President: Gentlemen, I need hardly remind you—at least many of those present will not need reminding—that it is nearly exactly ten years ago that we first inaugurated a series of lectures on the then new Law of Property Acts. Those Acts had been promised for some years, and when we heard that they were to come into force on the 1st January following, we felt that we had, to say the least of it, something to learn, and the lectures which were then given were very favourably received. The Solicitors' Managing Clerks' Association were the first to arrange, ten years ago, a series of lectures by Mr. Topham on the then new Acts. Those lectures attracted wide attention at the time, and were very favourably commented on. The lectures were on that occasion given by Mr. A. F. Topham, K.C., and we consider ourselves very fortunate in again securing his services for the lectures which are to commence to-night. (*Applause.*) The Council of my Association thought it was time, after this lapse of years, that we should have another series of lectures on this subject to review the decided cases and the general working of the Acts, and I think our thoughts were justified by the large attendance I see here to-night.

There is no need for me to introduce Mr. Topham, as he is so well known to all of you. There are two points, however, that I wish to mention before asking him to give his first lecture. One is, you will see from the notices round the hall that the copyright and sole right of publication of these lectures has been secured by the proprietors of "The Solicitors' Journal." The second point is, any questions you wish to put to the Lecturer must be in writing and sent to the Honorary Secretary of this Association, and not to Mr. Topham.

I will now ask Mr. Topham to give you his first lecture.

Mr. Topham: Mr. President and Gentlemen: I have to thank the President for the kind words he has said, and also for the way in which you have received them. He quite rightly says it is just about ten years ago since I lectured to you, or some of you, on what were then the new Property Acts. You will remember that the Property Acts, as we call them, consist of some five or six Statutes: the Law of Property Act, the Settled Land Act, the Administration of Estates Act, the Trustee Act and the Land Charges Act. All of those are the outcome of the original Lord Birkenhead's Act. One does not often hear that name attached to the Statutes now, and I think it is rather a pity, because Lord Birkenhead had a great deal to do, with the assistance of Sir Claud Schuster acting with him, in bringing about the legislation which ultimately took place. Those Acts, as you know, have now been in operation for very nearly ten years—a very important period for certain purposes under the Act. If I were writing a leading article in the newspaper, I should recall to you the prophecies I made ten years ago, and point out how precisely they have been fulfilled; but unfortunately I cannot quite remember what I did say ten years ago, though I think it is probable that I said I thought there would be, for a certain period, difficulties, particularly with regard to the transitional provisions, and that after that period the Act, I thought, would begin to work smoothly, and would save time and money. My prophecies, if I did make them, have been, I think, fulfilled, and where I was wrong, if I was wrong, I think, was this: that the settling-down process has taken a much less time than I should have anticipated. The chief difficulties which occurred were, I think, in respect of the question of undivided shares, and I believe you will find in looking through the reported cases that there are almost as many decisions on Part IV of the First Schedule of the Act as there are on almost the whole of the other Acts put together. For the years 1926 and 1927, and perhaps a few years after that, there are a large number of decisions on the Act which were reported, and in quite a large number of them leading counsel were engaged; but unfortunately (unfortunately in some respects), that all seems to have passed away, and there seem very few cases now which have to come before the court for decision. Certainly, so far as leading counsel are concerned, they are very few and far between, but from the point of view of the public no doubt that is all to the good, because it shows that the Acts have really got into working order remarkably quickly. When these decisions first came to be made, naturally the judges who had to decide them had no experience of the Acts as a whole, and it was rather a difficult task for a judge to approach a statute which was one of five, and which sometimes was difficult to understand in all its bearings unless he had a working knowledge of all five statutes; and the counsel who appeared before him, of course, very often had difficulty also, because none of us had had any working experience of the statutes, and many of the counsel had not started to read the statutes until they became law, and probably then had not had time to digest them all. So that it was difficult for the Bench, the judges who had not had any experience of the statutes, to understand, perhaps, the underlying principle of the whole of them, and there were some few judges who at first sight almost seemed to take a delight in making nonsense of the Act. Of course, I do not really mean that; but there are some decisions which appear to emphasise the difficulties and perhaps not to construe the statutes as beneficially as they might. That very soon passed away, and I think Mr. Justice Romer, as he then was, who had taken a considerable part in working out, and who presided over a committee for working out, the form of the Acts, and the amendments which should be made, led the way by adopting what you might call a beneficent or benevolent construction, and all the Chancery judges very soon adopted this very excellent principle, that on a new statute of this kind the most important thing of all was that the decisions should, as far as possible, be consistent, and that where any judge had decided a particular point, the others should loyally follow him and give effect to that decision as far as they possibly could. I do not, of course, have the practical working of this Act very much in my province. I am not a practical conveyancer in the sense that I do not actually do conveyancing. I only see it when questions arise which have to be advised upon, or come into court, but I have very many friends who are working on the practical side, drafting conveyances and everything connected with conveyancing, and they tell me that in their experience these new Acts are now working very smoothly indeed, and it is very seldom that really difficult questions arise. Most of the questions which did arise originally have now been settled. I have some experience with students who are reading for the Bar, and I find that the students have no difficulty whatever with the new system. They find it logical; they find there is a reasonable basis for it: but they still find, and perhaps increasingly so, a difficulty in following, or, at any rate, remembering and repeating, the old law; and there seems to me rather a danger that the old law may be forgotten. When I say "the old law," it is the law which existed right down to 1925, and, of course, it has a very great bearing on rights and title

at the present day. I feel there is some danger that the new generation growing up will have only a hazy notion of the old law, and many of them will be just as puzzled by contingent remainders and uses as we are now when we come to the old forms of pleading with demurrers and things of that kind.

Before coming to actual difficulties which arise, and the decisions upon them, I should like to remind you of the general purposes for which these Acts were passed, and how they came to be passed, because it is always a help when you are dealing with any difficulty which arises under a statute to bear in mind what the purpose of the statute was. The courts have many times said that that is a perfectly fair and proper way of approaching the construction of a statute. To go back for some considerable number of years, say sixty years, many people, and, in fact, I think most people, except those who were expert conveyancers, thought that the method of conveyancing adopted in England was unnecessarily complicated and expensive; and the remedy which occurred to all those who did not know anything about the subject was that registration of title must be the remedy; and sixty years ago, in 1875, an Act was passed which introduced, as you probably know, a system of registration of title for the whole country. It is not altogether perhaps quite well recognised and remembered that there has been for sixty years a system of registration of title in force all over the country. The reason why it is not remembered or recognised is that that system of registration of title became almost a complete dead letter. There being no compulsion about it, very few people took advantage of the statute. But after that had gone on for some twenty years, it occurred to the Lord Chancellor of that day that if registration was going to be effective in England there must be some form of compulsion. That idea was very strongly opposed, by the solicitors particularly, and also I think by the conveyancing counsel, and the result was that something in the nature of a compromise was arrived at. As you will remember, under the Land Transfer Act of 1897, registration of title was made compulsory in the County of London. That was to be an experiment, and owing to the great opposition which was brought forward the experiment was not to be extended to any other county except on a resolution passed by the county council in such a form that it was very unlikely ever to be passed. Well, that went on for some considerable time, and it was not extended to any other county, and the Lord Chancellor (Lord Haldane) again was anxious to see what was wrong, and he was told that there were various defects in the system of administration of registration of title, and a Royal Commission was appointed in 1908 which reported in 1911. Lord St. Aldwyn was Chairman, and Lord Buckmaster and Lord Cave were on the Commission. They were appointed with a view to ascertaining whether the Land Transfer Act with compulsory registration in London was working successfully, and whether it should be extended. They heard a lot of evidence, and they came to the conclusion that there were certain defects in the method of registration, and they suggested that there should be certain amendments in the Acts. But they went further than that, and this is where the history of these statutes comes in. The late Mr. Charles Sweet, the conveyancer, when giving evidence before them, said that in his view you would never get registration of title at all satisfactory until the complicated law of real property was made more simple. That idea germinated, although it was not part of the report, and it was not within the reference to that Commission, and under Lord Birkenhead a Committee was appointed, over which Sir Leslie Scott presided, with a view to considering generally how the transfer of land could be facilitated, and the reference was made sufficiently wide to cover the question as to whether the law of property should be simplified in the manner suggested. That Committee, on which I had the honour of sitting, heard some evidence, and we found the evidence given before the St. Aldwyn Commission of very great value; but then again there was a certain controversy; once more all the solicitors, and, I think, the conveyancing counsel, were against registration of title, but the general public, business men and lawyers who had not had much experience of conveyancing, and people on the common law side, were all strongly in favour of registration of title; and once more there was the compromise which you find was effected under these Property Acts; and when we are talking about the Property Acts we must not forget the Land Registration Act of 1925, because that is all part of the scheme. The compromise was this, that the law of land should be simplified as far as it possibly could be, and there should be no extension of the compulsory area of registration until a period of ten years had elapsed, except under the old method when the county council asked for it; and that the Land Registration Acts should also be amended and improved, and after the two had worked together for the course of ten years it would be possible to say whether registration under the new system was a success, or whether the old system with the much simplified law was so successful that registration was not necessary. It affords a key to the solution of a good many problems in the Act if you will remember that many of the provisions of the Act were put in, perhaps not with the knowledge of everybody at the time, but they were put in, in order that the system of registration of title should be easier and more effective.

One of the great difficulties in applying registration of title to land in England satisfactorily is the custom of settling land. In this country, as you know, a very large portion of land, the larger estates particularly, was settled to go down in the family, and a good number of the estates are still so settled, though not so many as before; and where the land is settled on a tenant for life with portions, terms and estates tail in remainder, it did not fit in at all well with a simple system of registration of property in land. So one of the most important things which had to be done was to arrange that there should be an absolute owner of the land who could be dealt with as the owner capable of dealing with the land, in the same way as there is an absolute owner of the shares of a company, whose name is on the register, with whom you can deal without taking any notice of trusts. That was the idea which was the basis of the change which did away with all the smaller legal estates in land—life interests and estates tail—and reduced legal estates to the fee simple absolute and the term of years absolute. The ideal which was aimed at was that there should be one person who was the owner of the land, and that the purchaser should look to him alone and should not be concerned to inquire about trusts and equities. Of course, the difficulty about that was that you did not want to jeopardise the trusts and equities by letting a purchaser purchase the land and take the land free from the equities unless they were safeguarded in some way. It was Sir Benjamin Cherry, I think, who first brought into the drafting of these statutes the analogy of what used to be known as the trader's settlement, a settlement of property by way of trust for sale. That, he said, was a very convenient method of settling property of all kinds, because you had as a rule a deed by which the property was conveyed or transferred to the trustees on trust for sale, and then a separate document in which the trusts were set out. The custom of conveyancers was that the purchaser buying the land or property only looked at the deed conveying the land to the trustees on trust for sale, and did not trouble about the trusts, and the way it was applied to settlements was, as you now know, that the person who had the power of dealing with the land—usually the tenant for life—should become the absolute owner in law of the property, and some document, which is now called the vesting deed or vesting instrument, should show that the legal estate in fee simple is vested in him, and all the trusts and equities should be put under another document

which the purchaser would not be concerned with. In working that out, the idea that was borne out in the Act was that the powers which are given to the tenant for life in the one case, and the trustees for sale in the other case, should be almost precisely the same, so that there should be the greatest facility in dealing with the land whether it was held under trust for sale, or whether it was held under a settlement. But, again, it was Sir Benjamin Cherry who insisted that it was most important to keep the two things quite distinct. Those of us who had in mind the analogy of stocks and shares suggested that the simplest way of settling land would be to do as is done with stocks and shares; let the ownership be in the trustees and let the beneficiaries only have equitable interests which will not appear in the deed at all; and some people I believe now think it is a pity that settlements were not done away with, and that all settlements of land were not carried out by means of conveying the land to the trustees to deal with. But Sir Benjamin Cherry pointed out that that would not be at all welcome to the class of persons who are owners of settled land or tenants for life of settled land; and I am quite sure, after seeing the working of the Act, that he was right in that where you have got a person who is living in the house as tenant for life—the father of the family, who is the man most interested in looking after the thing keenly and seeing what is actually required. My experience as a trustee, or as a person dealing with trustees, is that it is extraordinarily difficult to get two or three trustees to attend to business promptly, and to look after all the details constantly. One trustee is always away, or going for a holiday, or forgets to answer your letter, or something of that kind, and I am quite sure that business goes through much more quickly when the person beneficially entitled is the person who can exercise the powers himself. At any rate, the idea of keeping a settlement on foot is this, that where you desire that the beneficiary in possession shall be able to look after his own property, and make his own leases, and sell what has to be sold, then the settlement is the method of doing it. For that purpose the legal estate is vested in that person, and he has all the powers, and no powers can be given to anybody else. On the other hand, if you do not want that—if you want the trustees to exercise the powers—you must give them all the powers, and for that purpose you must vest the land in the trustees upon trust for sale. The result of those wide powers which are given to the tenant for life in the one case, or the trustees in the other, is that land is very readily saleable, and in fact, it is very difficult to provide, if some settlor wishes so to provide, that the land is not to be sold, or even to put any kind of check on the selling or dealing with the land. Settlors are rather apt to try to do so, but the attempts generally fail, and it wants a very skilled conveyancer to draw a settlement in such a way that the land will not in fact be sold. It is rather curious, and you might say anomalous, but supposing a testator or settlor asks you what is the best way to prevent the land from being sold, your answer is "The best thing to do is to convey it to trustees on trust for sale." The reason of that is that, of course, when you create a trust for sale, you can give full power (in fact, power is implied) to the trustees to postpone the sale as long as they like. Then you can appoint as many as four trustees, and the trustees for sale cannot act and cannot sell unless they all agree to sell. Further, you may make it necessary to get the consent of a certain number of persons before the sale can take place. So that in that way if a testator indicates a desire that the property shall not be sold, and gives it to trustees on trust for sale with the consent of some two or three persons, it is very likely that he will be able to keep the property unsold for a considerable time. You cannot carry that method of making consent necessary very far, for this reason, that under the Act that was rather anticipated by s. 30 of the Law of Property Act. Where consents are required, the court can authorise the trustees to sell in cases where the consent is refused. The words of the Act are "If any requisite consent cannot be obtained," then the court can dispense with the consent. One case occurred in which that question arose. It is the case of *Re Beale's Settlement* [1932] 2 Ch., at p. 15. Certain persons were entitled to life interests in the proceeds of sale; that is to say, it was land given to trustees in trust for sale with power to postpone sale, and the consent of the person interested for life in the proceeds of sale, or in the land until sold, and his wife was required before the trust for sale could be carried out. One of the persons in question had become bankrupt, and refused his consent. I do not know why he should have done that; whether he was annoyed with the other parties or not, I do not know, but, at any rate, he did. The other parties desired to have a sale, and there the court under s. 30, and also applying s. 57 of the Trustee Act, authorised the trustees to sell without that consent.

I have just told you that one of the primary ideas of Sir Benjamin Cherry, who drafted these statutes, was that you must keep your trust for sale absolutely distinct from the settlement of land, and to make that more clear, where there is a trust for sale the land is not settled land. It does not come under the Settled Land Act at all, but it comes under the Law of Property Act. I think that was made quite clear in the original statute of 1925, but it was made still more clear by the amending Act of 1926, in which it was expressly stated in the Settled Land Act that land subject to a trust for sale could not be settled land, and many sections are now amended by adding the words "land not being subject to trusts for sale," or some such words as those.

Then you may remember that a trust for sale is defined in the Act, and that definition first gave rise to some little difficulty. The definition of a trust for sale is this, that it must be an immediate binding trust for sale. That phrase, "immediate binding trust for sale," caused some difficulty, and a case was decided by Mr. Justice Tomlin (as he then was, whose recent sudden death we all feel very much) in the year 1926. That was the case of *Re Leigh's Settled Estate* [1926] Ch., at p. 852. I feel a little difficulty in telling you the facts of this rather complicated case, before telling you what was decided, and I think I must take the facts very slowly, and perhaps even repeat them, so that you have a sort of vision of the case clear before your eyes. If one had a blackboard here, one might write it down, but I want to take these facts quite slowly. I shall try in all these cases to cut down the facts to the minimum, and I will tell you what the facts in this case were. There was a will of a testator who died in 1861. The date is not material except that it is a good long time ago. He settled freehold land on one John Leigh for his life in the ordinary way, with remainder to his sons in tail—his first and other sons successively in tail, with remainder to his daughters in tail—and a power was given to John Leigh, the tenant for life, to appoint a jointure to any wife that he might marry up to £1,500 a year. Some years after that, in 1885, John Leigh did appoint a jointure rent-charge of £1,500 to his wife, and that was charged by way of equitable charge on the land. Then, at some date which is not in the reports as far as I can see, John Leigh, the tenant for life, died. He had no sons, but one daughter, and she married. She was an infant, as a matter of fact, when she married, and the court approved a settlement under the Infant Settlements Act. You will see the materiality of that a little later on. However, there was one daughter, Mrs. Tenison, so she became tenant in tail, there being no sons, and when John Leigh died she barred the entail. Then she conveyed the fee simple of the land to trustees in trust for sale. The question which arose was, was there a trust for sale within the meaning of the Act, or was there a settlement? Now, just to summarise it again, so that you have those facts before you, the position was, when the case came before Mr. Justice Tomlin, that the daughter, the tenant in tail, had barred the entail and had got a fee simple, but owing to the jointure rent-charge, it was a fee simple subject to an equitable charge which had been created before the trust for sale was created. The jointure rent-charge was in existence and charged on the

land before Mrs. Tenison conveyed the land to trustees on trust for sale; and the question was whether there could be said to be an immediate binding trust for sale when the trustees at that time, at any rate, according to the judge's decision, were not able to over-reach or over-ride that prior equitable charge. The learned judge held that the words "binding trust for sale" must mean something, and he said it must mean such a binding trust for sale that it could bind all the land so that they could sell the land free from all trusts and equities altogether.

That decision was very disturbing at the time. Those of us who had anything to do with the drafting of the Acts, or bringing them about, felt it was not at all what had been intended, and many people thought that too narrow a construction had been put on the Act by giving to the word "binding" that very special meaning. There is a reference in a note in the book which was edited by Sir Benjamin Cherry to the case of *Re Goodall* with reference to the word "binding." In *Re Goodall* [1909] 1 Ch., at p. 440, the trustees had been directed to sell the land at the request in writing of the tenant for life, so that it did not arise until after they got this request, with a power to the tenant for life to revoke the trust for sale; and the court in 1909, which is long before these statutes, held that under the then relevant section of the Settled Land Act it was not land which was subject to a trust or direction for sale, because it was a trust which might never become immediately effective; it was only a trust to sell at the request in writing of somebody, and he had a power to revoke the trust; and I have no doubt that Sir Benjamin Cherry in drafting the Act had in his mind that case of *Re Goodall*, and only meant to exclude such a contingent trust, and did not mean anything more by the word "binding" than that. That, as I say, rather disturbed the conveyancers, and if things had stopped as they were it would have upset the working of the Act as to trusts for sale, because it would mean that whenever there was any equitable charge outstanding which had existed before the deed conveying the land on trust for sale, there could not be a trust for sale under the Act. It really was a very disturbing decision; but the sting of it was rather taken away by the fact that the amending Act of 1926 made the application of that decision very much less important, because one thing that the amending Act did was this—I am not quite sure that the Act of 1925 was not really intended to mean this before, but the amending Act made it quite clear—it provided that where there are trustees for sale, when they were either appointed by the court or approved by the court, they could over-ride equitable interests, even though they had priority over the trust for sale. That is to say, the Act of 1926 provided that trustees for sale in the position that they were in in *Leigh's Estate* could sell the land free from such a prior charge as the jointure rent-charge to the wife. Then *Re Leigh's Estate* came before Mr. Justice Tomlin again after that statute had been passed, and the judge then held that as the marriage settlement of Mrs. Tenison, the daughter, had been approved by the court under the Infant Settlements Act, the court had thereby impliedly approved of the trustees of the settlement, and therefore they were trustees for sale who had been approved by the court, and they could over-ride the jointure rent-charge that existed before the settlement was made, and therefore, they had become by virtue of that Act trustees under an immediate binding trust for sale. The result of that was that that decision stands, but it is not nearly so serious, because if you find that there is a prior equitable interest which you want to over-reach, you have only to get your trustees appointed or approved by the court. But the case of *Re Leigh*—the first decision which was known as *Re Leigh, No.* 1—still appears to remain as a decision that there is no immediate binding trust for sale if there are any equitable interests which the trustees for sale are not in a position to over-ride. That is to say, supposing you have a case like *Re Leigh's Estate* with the same facts, the trustees not having been approved by the court, the decision would still apply to say that they were not trustees with an immediate binding trust for sale. A similar question arose in a later case, and this time it came before Mr. Justice Romer, as he then was, who had a much fuller knowledge of the whole of these statutes, and he took a different view. That is the case of *In re Parker's Settled Estates* [1928] Ch., at p. 247. The facts were these, and again I will take them quite slowly. The testator died in 1888. The land was devised to the use of the plaintiff for life, the remainder to the plaintiff's first son in tail, with power to jointure and raise portions. It was similar in that respect to *Re Leigh's Estate* in 1901. The plaintiff appointed a jointure to his wife of £400 per annum, and portions for his younger children, and he created a term of 1,000 years to secure those portions. In 1924, the eldest son, who had become the tenant in tail in possession, conveyed the land to trustees in trust for sale. That is very like *Re Leigh*, if you carry your minds back. It was a case of the tenant in tail barring the entail, thus getting the fee simple and holding the fee simple subject to a jointure existing before he created the trust for sale. It was also subject to portions and a legal term. Note that before the 1st January, 1926, i.e., in 1924, the land was conveyed to trustees in trust for sale, and it was then subject to a jointure and portions and a legal portions term. Mr. Justice Romer went very carefully through all the Acts with a view to ascertaining what was meant by this "immediate binding trust for sale," contrasting one section with another, so that he got the atmosphere of the whole Act before him, and he then said in his judgment that if Mr. Justice Tomlin meant that there was no immediate binding trust for sale if there was an equitable interest which could not be over-reached, he did not agree with him. He said he was not quite sure that Mr. Justice Tomlin meant that, and perhaps he meant something else, but if he did mean that, he did not agree, and he decided this: that when you have got the whole legal estate in fee simple vested in trustees on a trust for sale taking effect at once, there is an immediate binding trust for sale, even though there may be equitable interests which the trustees are not in a position to over-reach. There is a conflict to a certain extent between those two decisions. I have very little doubt that if the same point had come before Lord Tomlin afterwards in the House of Lords, with the experience that he had then had of the Act, he would have taken the view that Mr. Justice Romer took, because it fits in so much more completely with the whole working of the Act, and I think he would have agreed ultimately with the very careful and elaborate judgment of Mr. Justice Romer. At any rate, conveyancers, I think, almost as a body have come to the conclusion that if there is any conflict between the decision in *Re Leigh* and the decision of Mr. Justice Romer in *Re Parker*, that *Re Parker* is right, and that where the whole legal estate is vested in trustees on trust for sale, that is an immediate binding trust for sale, and therefore the land is not settled land. But in that particular case, Mr. Justice Romer held that there was not an immediate binding trust for sale because the whole legal estate was not immediately vested in the trustees; there was outstanding a legal term of 1,000 years. So that looking at it from the strict point of view of law, the land belonged to trustees, X and Y, for 1,000 years, and then, after that, these trustees who held the land in trust for sale only held the fee simple reversion, and therefore there was not an immediate binding trust for sale, and therefore the land remained settled land, and all the powers were exercisable by whoever was in the position of having the powers of tenant for life, and not by the trustees. Again, that decision you may think was far-reaching, where the legal term of years will prevent the trust for sale from becoming effective under these Acts, but that is modified by this, that where terms of years are created in settlements for securing jointures and portions, under the Acts those terms have now, in most cases at any rate, where they have

not been used actually to raise money, been converted into equitable terms. As soon as the vesting deed is executed, they become equitable terms, and will not prevent, therefore, if Mr. Justice Romer was right, an immediate trust for sale being created. The position as to those terms which are put into settlements for securing portions, and so on, is this: if you were to create a settlement in the old form granting legal terms to trustees, under the Acts those terms become equitable terms; but, on the other hand, if you have got some legal term created out of the land, and after that and subject thereto the land is conveyed to trustees on trust for sale, then it would appear that the land would be settled land, because the trustees only have a future trust for sale not binding all the legal estate until the term has come to an end. That is therefore not very likely to arise now, because these terms, as I have said, are nearly always now equitable terms. The views which were then expressed by Mr. Justice Romer, as he then was, and which I am asking you to accept rather than *Re Leigh* were supported by another decision in *Re Norton* [1929] 1 Ch., at p. 84. The facts of that decision are so complicated and unusual that I have come to the conclusion that it is hardly fair to try and put them before you in a lecture, but I merely give you that as a reference to a case in which those notions are supported. The case further shows that if there is no trust for sale—no immediate binding trust for sale—the settlement remains a settlement so long as there are any of the original trusts or charges outstanding, even although ultimately there will be a trust for sale when all these equitable charges come to an end, and the legal terms come to an end. It may be rather assumed, therefore, that supposing you have a legal term, so long as the legal term is in existence the land will be settled land, but when the legal term falls in it becomes land upon trust for sale, and then the trustees will have to take over. As I have said, I am afraid that the facts of that sort of case, like *Re Leigh*, are very complicated, and there will be other cases where I shall have to put very complicated facts before you; but these lectures, I understand, are being reported, and it may be, if I have not made the facts quite clear to you at the moment, you may be able to refresh your minds by looking at the report afterwards; but I am afraid it is quite impossible to deal with these decisions on the Settled Land Act without sometimes having to put before you very complicated sets of facts.

I will stop there to-night. (*Applause.*)

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Removal of Registry of Land Charges and Middlesex Registry from the Land Registry to Red Lion Street.

Sir,—We notice on p. 760 of your issue of the 12th inst., that the departments dealing with the above are to be moved on the 28th inst., to Lion House, Red Lion-street, W.C. It seems curious that the Registry cannot acquire property nearer to the Land Registry, which would suit the people who do their business at the Land Registry much more.

We suppose that on the 28th inst. there will be a continuous procession of clerks from the Land Registry to Red Lion-street, and we venture to suggest that this step which has been taken may lead to great confusion in the profession.

Cannot further enquiries be made to see whether accommodation cannot be found in the present Land Registry. Whilst clerks are searching at the Land Registry, or *vice versa*, the other department may be closed, and so searches will have to be conducted over again the next day, and this may have the effect of postponing completions.

Soho-square, W.1. A. E. HAMLIN, BROWN & Co.
15th October.

Reviews.

Manual of the Law of Evidence. By the late SIDNEY L. PHIPSON, M.A. (Cantab.), of the Inner Temple, Barrister-at-Law. Fifth Edition, 1935, by ROLAND BURROWS, K.C., Reader in Evidence at the Inns of Court, assisted by C. M. CAHN, B.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. xlvii and (with Index) 344. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

In this edition the editors have, as one would expect' produced something even more useful to students than the earlier editions. The book has always been well known, both to students and practitioners, but it has now been adapted so as to have a special appeal to students. The language, particularly of the preliminary outline of the law, has been simplified and, as a necessary consequence, clarified. One is tempted to feel that if this process was applied to some of the tomes which are supposed to be for practitioners only, those persons would be more enlightened and less hard worked. A great improvement in this book is the placing of the examples immediately after the text they illustrate, thereby saving much tiresome turning and re-turning of pages. The division of the examples into an "admissible" and an "inadmissible" column has been wisely continued. The work has been brought right up to date, all the recent cases being included. These are quite numerous, being mostly connected with criminal law. At p. 259 is a reference to the County Courts Act, 1934, s. 23, but the editors, perhaps being optimistically of the opinion that the Act would be in force by the time the book was published, have omitted to draw attention to the peculiar machinery by which the Act is eventually, one hopes, to become effective. At present it is merely, not a "dead" but an "embryo letter." For the benefit of students it would have been well to include an explanation of Ord. XVIII, r. 9, of the County Court Rules, which provides for production of documents from proper custody and is a valuable standby for the advocate who is in difficulties as to proof. The rule will presumably be re-enacted in the new rules. The Criminal Evidence Act is reproduced as an appendix. This is useful. There is a full index, but, presumably for reasons of economy, it is not as widely spaced as it might be. The effect is a little confused. Generally, however, the book is a very good edition of a work that has long since proved its value.

Books Received.

Civil Judicial Statistics. 1934. Compiled by the County Courts Branch, Lord Chancellor's Department, House of Lords. 1935. London: H.M. Stationery Office. 1s. net.

What a Word! By A. P. HERBERT. 1935. Crown 8vo. pp. xi and (with Index) 286. London: Methuen & Co., Ltd. 6s. net.

Prisoner's Progress. By Colonel S. G. PARTRIDGE, C.M.G., C.B.E., (formerly Assistant Secretary, New Scotland Yard). 1935. Royal 8vo. pp. (with Index) 287. With 20 Illustrations. London: Hutchinson & Co. (Publishers) Ltd. 18s. net.

Trustees—and Irish Securities. 1935. London: Fredc. C. Mathieson & Sons. Price 6d. net.

The Murder in the Temple and Other Holiday Tasks. By Sir FRANK DOUGLAS MACKINNON. 1935. Demy 8vo. vii and 237. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

The Restriction of Ribbon Development Act, 1935. By The Hon. DOUGALL MESTON, of Lincoln's Inn, Barrister-at-Law. 1935. Royal 8vo. pp. xxiv and (with Index) 60. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 5s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

Appeals from County Courts.

Sylvester *v.* G. B. Chapman Ltd.

Lord Wright, M.R., Romer, L.J., and Eve, J.
8th and 9th October, 1935.

ACCIDENT — LEOPARD'S CAGE — BARRIER — SMOULDERING CIGARETTE ON STRAW—PERSON NOT EMPLOYED BY ANIMAL'S OWNER ENTERING BARRIER TO EXTINGUISH IT—INJURY—*Volenti Non Fit Injuria*—NO DUTY OWED TO HIM.

Appeal from Clerkenwell County Court.

A groom working at the Agricultural Hall, Islington, in connection with a number of circus horses not belonging to the defendants, was passing the cage of a leopard which the defendants had on show, when he saw a lighted cigarette smouldering among some straw between the cage and the barrier. He crossed the barrier to extinguish it, and the leopard put its paw through the bars and mauled his hand. The plaintiff alleged that the top bar covering the aperture used for feeding the animals was not in place and brought an action for damages. In cross-examination, he admitted that had he stayed on the proper side of the barrier there was no chance of his being mauled, that he had no business to get over the barrier and that there were keepers available. His Honour Judge Earengey held that no case had been made out. The plaintiff appealed.

LORD WRIGHT, M.R., dismissing the appeal, said that it had been argued that the principle in *Haynes* v. *Harwood* [1935] 1 K.B. 146 applied, but the facts of the present case were completely different. The cage plus the barrier constituted sufficient performance of the duty to keep the leopard secured. If someone got inside the guard, he was bringing trouble on himself. In principle, the case was the same as *Marlor* v. *Ball*, 16 T.L.R. 239. The doctrine stated in *Haynes* v. *Harwood*, *supra*, did not apply. The plaintiff was not rescuing anyone from imminent danger or death, nor even preventing damage to property, since there were people who could easily have done with precautions what he did. He was essentially a volunteer.

ROMER, L.J., and EVE, J., agreed.

COUNSEL: *Hector Hughes*, K.C., and *I. F. Reuben*; *H. Whitmee*.

SOLICITORS: *A. W. Rhodes & Co.*; *William Charles Crocker*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Jones *v.* Bennett.

Sir Boyd Merriman, P., Roche, L.J., and Swift, J.
8th and 9th October, 1935.

WATER—RIGHTS IN COMMON—DIMINUTION OF FLOW.

Appeal from Abergavenny County Court (79 SOL. J. 416).

The plaintiff, in common with adjoining owners, including the defendant, was entitled to a certain flow of water. The defendant laid a pipe from the pipe through which he was supplied to his lily pond. His Honour Judge Thomas held that there was evidence of deprivation of water which the plaintiff was entitled to enjoy and awarded £5 damages and an injunction against interference with the flow of water.

Sir BOYD MERRIMAN, P., said that the appeal would be dismissed with costs and the order varied to show that the defendant had given an undertaking to disconnect the lily pond.

COUNSEL: *Evershed*, K.C., and *Springman*; *Topham*, K.C., and *Godfrey Parsons*.

SOLICITORS: *William A. Crump & Son*; *Shirley Woolmer & Co.*, agents for *Hodgens, Cunliffe & Lemmon*, of Abergavenny.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Edmonson *v.* Sir R. Ropner & Co. Ltd.

Lord Wright, M.R., Romer, L.J., and Eve, J.
10th and 11th October, 1935.

MASTER AND SERVANT—CONTRACT OF EMPLOYMENT—MASTER OF STEAMSHIP—TERMS OF SERVICE—"COMPLETE SATISFACTION" TO BE GIVEN—SUMMARY DISMISSAL—WHETHER WRONGFUL.

Appeal from West Hartlepool County Court.

From 1927 the plaintiff was employed by the defendants as a shipmaster during various periods. In 1933 he was appointed to be captain of the s.s. "Ainderby." In a letter of the 18th November the owners said: " . . . your position on the steamer will be most carefully watched, and, unless complete satisfaction is given, we shall have no hesitation in relieving you of this command with no further hope of employment with us . . . " After a voyage to South America, the vessel returned in August, 1934 when the plaintiff was summarily dismissed, the owners in a letter stating that they had "reason to believe that conditions aboard your steamer are far from satisfactory." His Honour Judge Richardson held that there was no misconduct justifying summary dismissal, but that the dissatisfaction of the defendants was genuine, and that, therefore, under the terms of the letter of the 18th November, they were entitled to dismiss the plaintiff summarily. The plaintiff appealed.

LORD WRIGHT, M.R., dismissing the appeal, said that, apart from the letter, the captain, if employed for an indefinite hiring, would have been entitled to reasonable notice. In *Savage* v. *British India Steam Navigation Co., Ltd.*, 46 T.L.R. 294, reasonable notice for a chief officer of a P. & O. liner was held to be twelve months, but less notice might be reasonable in the case of an ordinary tramp. However, in this case, the master might be dismissed without notice, though no misconduct was found. The explanation that the words in the letter were merely meant to constitute a warning was quite inadequate. *Diggle* v. *Ogston Motor Company*, 84 L.J. K.B. 2165, was followed by the learned county court judge. *In re African Association, Ltd., and Allen* [1910] 1 K.B. 396, was quite a different case.

ROMER, L.J., and EVE, J., agreed.

COUNSEL: *R. E. Gething*; *T. G. Roche*.

SOLICITORS: *Bennison, Garrett & Co.*; *Temperley, Tilly & Hayward*, of West Hartlepool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Derbyshire County Council *v.* Middlesex County Council.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
8th and 9th October, 1935.

POOR LAW—SETTLEMENT—MEMBER OF TERRITORIAL FORCE—FOURTEEN DAYS IN TRAINING CAMP—WHETHER A PERIOD SPENT IN MILITARY SERVICE OF THE CROWN AND THEREFORE TO BE EXCLUDED IN COMPUTING RESIDENCE FOR THE PURPOSES OF THE POOR LAW ACT, 1930—TERRITORIAL AND RESERVE FORCES ACT, 1907 (7 Edw. 7, c. 9), s. 2 (2) (*a*)—POOR LAW ACT, 1930 (20 Geo. 5, c. 17), s. 86 (1), s. 93 (1) (*a*).

Appeal by the Derbyshire County Council by way of case stated in pursuance of the Quarter Sessions Act, 1849, s. 11, against an order obtained by the Middlesex County Council, under s. 95 of the Poor Law Act, 1930, for the removal to the Administrative County of Derbyshire of a poor person, A. P. Booth.

Booth was born in Bradford in 1889, and in 1896 came to Chesterfield, Derbyshire, to live there with his parents until 1910, when he went to Nottinghamshire for six months. Thereafter, he remained in Chesterfield with his mother until June, 1911, when they both went to live in Sheffield. Booth lived there until the 5th August, 1914, without interruption

except for an absence from the 2nd to the 16th August, 1913, when he was attending the annual camp of the Territorial Force. During that period, he served on the then current Conditions of Service of the Force, which were similar to the present Conditions of Service in the Territorial Army. From the 5th August, 1914, to the 25th February, 1919, Booth was engaged in military service with the Territorial Force, and from 1919 to 1930 he was abroad. After his return to England, he had no fixed abode and occasionally received poor relief. On the 29th June, 1932, he became chargeable to the Middlesex County Council at one of their institutions. On the 11th May, 1934, that council obtained an order for his removal to Derbyshire as being the place of his last legal settlement. The Derbyshire County Council having appealed against the order on the ground that Booth was last legally settled in the County Borough of Sheffield, the question was whether the fourteen days spent by Booth in camp were a period during which he was serving in the military service of the Crown within the meaning of s. 93 (1) (*a*) of the Poor Law Act, 1930, so as to constitute a break in his residence for three years at Sheffield.

LORD HEWART, C.J., said that the true question was whether, during the particular fortnight in question, Booth was serving in the military service of the Crown as a soldier. It had not been denied that, during some part at any rate of the period of four years for which a man joined the Territorial Army, he was in the military service of the Crown. The Territorial and Reserve Forces Act, 1907, which followed the Volunteer Act, 1863, carefully distinguished what it called "actual military service" from "service" *simpliciter*. He (his lordship) agreed with the appellants' argument that, although a member of the Territorial Force was at all times while he remained a member potentially a soldier, it was not true to say that he was actually serving in the military service as a soldier except perhaps at certain times during the four years. From the Act of 1907, it was clear that the legislature, having regard to the civilian nature of this force, had been very careful in the terminology used, for example, in s. 10 (1), where the expression "man of the Territorial Force" was substituted for "soldier." There was no doubt that this poor person had at all material times been a man of the Territorial Force, but it by no means followed that, when in camp for a fortnight, he was in the service of the Crown as a soldier. He (his lordship) had therefore come to the conclusion that the test was not whether the term "soldier" was in some sense at any time applicable to a man of the Territorial Force, but whether it was true to say that a member of the Territorial Force in camp for fourteen days and therefore subject to military law, was during that period serving in the military service of the Crown as a soldier. He (his lordship) thought he was not, and that the true conclusion was that he was serving in the military service of the Crown only during those periods which could properly be described as ones of actual military service, and that the period of fourteen days accordingly, did not constitute a break in the poor person's residence in Sheffield. The appeal must, therefore, be allowed.

COUNSEL: *A. M. Trustram Eve*, K.C., and *Hills* for the appellants; *Cartwright Sharp*, K.C., and *Eric Blain*, for the respondents.

SOLICITORS: *Kingsford, Dorman & Co.*, agents for *H. Wilfrid Skinner*; *C. W. Radcliffe*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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Obituary.

MR. A. R. H. AKASTER.

Mr. Albert Roy Hamilton Akaster, retired solicitor, of Devonport, died on Tuesday, 8th October. He was admitted a solicitor in 1910, and became a partner in the firm of Messrs. Gill, Akaster & Leest, of Devonport. He retired recently on account of ill-health.

MR. R. S. CLIFFORD.

Mr. Richard Sutton Clifford, junior, solicitor, of Loughborough, died on Wednesday, 9th October, at the age of fifty-five. Mr. Clifford, who was admitted a solicitor in 1901, was formerly a member of the firm of Messrs. Cliffords, of Loughborough. The partnership was dissolved about two years ago.

MR. G. H. EVANS.

Mr. George Henry Evans, solicitor, of Chester, died on Tuesday, 15th October, after he had been knocked down by a motor car. Mr. Evans, who was admitted a solicitor in 1893, was over sixty years of age. He was a member of the Scriveners' Society.

MR. M. H. JONES.

Mr. Matthew Henry Jones, solicitor, senior partner in the firm of Matthew Jones & Lamb, of Liverpool, died recently at his home at Birkenhead, at the age of seventy-six. Mr. Jones was admitted a solicitor in 1880.

MR. C. G. PRESTON.

Mr. Charles Guy Preston, solicitor, a member of the firm of Messrs. Wells & Hind, of Nottingham, died on Wednesday, 9th October, at the age of sixty-five. Mr. Preston, who was educated at Rossall School, served his articles with his father, Mr. Charles Sansome Preston, solicitor, of Hinckley. He was admitted a solicitor in 1923. He had been associated with Messrs. Wells & Hind for thirty-two years, first as managing clerk and for the past eleven years as a partner.

Mr. Richard Peele Mossop, solicitor, of Salcombe Regis, left £41,895, with net personalty £40,570.

Societies.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room at 7.45 p.m. on 14th October. Mr. T. A. Holford proposed the motion : " That in the opinion of this House the Suez Canal should be closed to the passage of the armed forces of any State engaged in an aggressive war." Mr. Plowman opposed the motion. Messrs. T. Jameson, J. H. Menzies, S. A. Redfern, O. T. Hill, H. S. Wood-Smith and J. H. Vine Hall also spoke. After Mr. Holford had replied, the motion was put to the House and lost by three votes.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey-street, London, W.C.2, on 9th October, Mr. T. G. Cowan in the chair. The other Directors present were Sir A. Norman Hill, Bart., Sir Edmund Cook, C.B.E., Sir E. F. Knapp-Fisher, Mr. F. E. F. Barham, Mr. C. S. Bigg (Leicester), Mr. G. S. Blaker (Henley), Mr. P. D. Botterell, C.B.E., Mr. A. J. Cash (Derby), Mr. N. T. Crombie (York), Mr. T. S. Curtis, Mr. G. C. Daw (Exeter), Mr. R. Epton (Lincoln), Mr. G. Keith, Mr. C. G. May, Mr. R. C. Nesbitt, Mr. L. F. Paris (Southampton), Mr. H. F. Plant, Mr. E. Sant (Salisbury), Mr. F. L. Steward (Wolverhampton), Mr. A. B. Urmston (Maidstone), Mr. H. White (Winchester), and the Secretary. The sum of £2,178 10s. was distributed in grants to necessitous cases, twenty-eight new members were admitted, and Mr. W. N. Riley was elected a Director at Brighton. The formation of a company entitled the " Solicitors Benevolent Association Trustees " was reported, and other general business transacted.

The Union Society of London.

(Centenary Year.)

A meeting of the Society was held at the Middle Temple Common Room on Wednesday, the 16th October, at 8.15 p.m., the President (Mr. J. P. Winckworth) being in the chair. Mr. D. F. Brundrit proposed the motion : " That this House regrets the dilatory policy of the Government in relation to the Italo-Abyssinian dispute." Mr. Hurle Hobbs opposed, and Mr. Ingram, Capt. Ellershaw, the President, Mr. Ryan, Mr. Sandilands, Mr. Orme, Mr. Hackforth Jones, Mr. Oakes, Mr. Fedrick, Mr. Bassett, Mr. King, Mr. Fraser, Mr. Rogers and Mr. Wodehouse also spoke. Mr. Brundrit having replied, upon division the motion was carried by one vote.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that The Right Hon. Sir Alexander Adair Roche, one of the Lords Justices of Appeal, be appointed a Lord of Appeal in Ordinary in succession to The Right Hon. Lord Wright, who has been appointed Master of the Rolls. That The Right Hon. Sir Leslie Scott, K.C., be appointed a Lord Justice of Appeal.

The King has been pleased to approve that Lord Justice Greene be sworn of His Majesty's most honourable Privy Council on his appointment to be a Lord Justice of Appeal, and that the honour of Knighthood be conferred upon him.

Sir John Greig Latham, a former Australian Attorney-General, has been appointed Chief Justice of the Commonwealth High Court.

The Lord Chancellor announces that he has appointed Mr. Henry Lancelot Hingston Hill, F.C.A., to the vacancy created on the London Passenger Transport Arbitration Tribunal by the death of Sir James Martin.

The Lord Chief Justice has appointed Sir W. Francis Kyffin Taylor, K.C., Presiding Judge of Liverpool Court of Passage, as Chairman of the Coal Arbitration Board in Northumberland.

Mr. D. J. Phillips, Deputy Town Clerk, has been appointed Town Clerk of Llanelly in succession to Mr. H. W. Spowart, who has retired under the superannuation scheme. Mr. Phillips was admitted a solicitor in 1929.

Mr. William E. E. Lockley, Assistant Solicitor to Bootle Corporation, was on Thursday, appointed Assistant Solicitor to the Corporation of Warrington, in succession to Mr. Harold E. H. Lawton, who has been appointed Clerk to the Huyton-with-Roby Urban District Council. Mr. Lockley was admitted a solicitor in February, 1935.

Professional Announcements.

(2s. per line.)

Solicitors & General Mortgage & Estate Agents Association.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office : 12, Craven Park, London, N.W.10.

Notes.

The Barony conferred on Lord Justice Maugham on his appointment as a Lord of Appeal in Ordinary was gazetted last Tuesday by the style and title of Baron Maugham of Hartfield, in the County of Sussex.

It was officially announced at Scotland Yard last week that Air Vice-Marshal Sir Philip Game will take over the duties of Commissioner of Police of the Metropolis, in succession to Lord Trenchard, on 12th November.

The Incorporated Accountants' London and District Society gave a luncheon at the Hotel Victoria, Northumberland-avenue, on Thursday, 10th October, in honour of Mr. R. Wilson Bartlett on his election to the presidency of the society.

The retirement is announced of Mr. Walter Barrow, a managing director of Cadbury Brothers Limited, and the British Cocoa and Chocolate Co. Limited, since 1918, and vice-chairman of Cadbury Brothers since 1932. Mr. Barrow was admitted a solicitor in 1889, and was President of the Birmingham Law Society from 1908 to 1910.

Mr. Ivan Snell, the Marylebone magistrate, in adjourning a number of cases which owing to the congestion of work he could not hear, said that he had not complained that he had too much work, but that owing to the amount of work, barristers, solicitors, and witnesses had to come back week after week because their cases could not be completed.

The first of the four evening meetings to be held by the Incorporated Society of Auctioneers and Landed Property Agents during the session 1935–36 will take place on Tuesday, 5th November, when Mr. H. Mordaunt Rogers, P.P.A.I., will give an address on " English Porcelain." The meeting will be held at the Society's Headquarters at 34, Queen's Gate, Kensington, at 7.30 p.m.

Mr. Adam Partington, solicitor, the Registrar of the Ilford, Edmonton, Waltham Abbey and Brentwood County Courts, will be appointed as Registrar of the Grays Thurrock County Court in addition to his present Courts on the 1st day of December next. From that date Mr. Partington (who has resigned the town clerkship of the Borough of Ilford) will devote his whole time to his duties as County Court Registrar.

Consequent on the retirement of Mr. I. G. Gibbon, C.B., C.B.E., Director of the Local Government Division, which will take effect on 1st January, 1936, the Minister of Health has made the following appointments as from that date : Mr. H. W. S. Francis, O.B.E., to be Director of the Local Government Division ; Mr. J. C. Wrigley, to be Director and Principal Assistant Secretary of the Housing and Town Planning Division ; Mr. R. B. Cross, O.B.E., to be a Principal Assistant Secretary ; Mr. E. D. Macgregor and Mr. H. H. George, M.C., to be Assistant Secretaries.

A pamphlet on " Dilapidations," explaining the Ecclesiastical Dilapidations Measures, 1923-29, has been published for the Legal Board of the Church Assembly by the Press and Publications Board, Church House, Westminster, S.W.1, price 2d., by post 2½d. The pamphlet, which covers such matters as repairs, notice of objections, " Ordinary Assessment," " Long Assessment," apportionment as between an incoming and an outgoing incumbent, incumbent's liability, grants by Queen Anne's Bounty, and alteration of buildings, is designed to assist not merely incumbents, but parochial church councils and various classes of church officials.

A portrait in oils of Lord Hewart, the Lord Chief Justice, painted by Mr. Oswald Birley, and presented to the Worshipful Company of Curriers by Mr. Bernard Denny, was unveiled by Mr. Lloyd George on Thursday, 10th October. The portrait has been presented to commemorate the association of Lord Hewart with the Curriers, of which Guild he is a Past Master and a member of the Court of Assistants. The ceremony took place in Cordwainers' Hall, where the Curriers now meet, and the portrait will hang on the walls near those of Mr. Joseph and Sir Austen Chamberlain, whose family has long been associated with the Cordwainers' Company.

The first of this Autumn's Chadwick Lectures was given in Wednesbury on the 9th October by Sir Raymond Unwin. His subject was " Good Housing—the Basis of Individual and Social Health." The first London Lecture of the present

series will be given by Captain R. St. Barbe Baker on Wednesday evening, 23rd October, in the Hall of The Royal Geographical Society on "The Contribution of Trees to National Health and Efficiency." The admission to all Chadwick Lectures is free and without tickets. Any further particulars of the courses can be obtained by writing to the Secretary, Mrs. Aubrey Richardson, O.B.E., at the offices of the Chadwick Trust, 204, Abbey House, Westminster.

The following members of the Middle Temple have been elected to Alfred Harmsworth Law Scholarships of £200 per annum, tenable for three years: Mr. J. S. Daniel (Haileybury College and Merton College, Oxford); Mr. J. Grimond (Eton College and Balliol College, Oxford); Mr. G. Heilpern (Manchester Grammar School and Hertford College, Oxford); Mr. J. P. Hunter-Brown (Tonbridge School and Jesus College, Cambridge); Mr. D. C. Mallam (Malvern College and Christ Church, Oxford); Mr. D. W. Markwick (Westcliff School and Fitzwilliam House, Cambridge); Mr. A. S. Orr (Fettes College and Balliol College, Oxford); Mr. L. G. Scarman (Radley College and Brasenose College, Oxford); and Mr. N. S. S. Warren (Clifton College and Hertford College, Oxford).

Mr. James Yate Johnson, solicitor, of Lincoln's Inn-fields, and of Hildenborough, Kent, left estate of the gross value of £32,006, with net personalty £29,560. He left: To the vicar and churchwardens of St. John's, Hildenborough, Kent, the silver gilt bowl presented to him by the Worshipful Company of Fishmongers as well as the resolution relating thereto, the bowl to be used if thought suitable for receiving the offertory bags from the sidesmen or for any other useful or ornamental purpose in the church.

CENTRAL CRIMINAL COURT SESSIONS.

The following are the days appointed for holding the Central Criminal Court sessions during the ensuing year:—
1935: 12th November, 3rd December. 1936: 7th January, 4th February, 25th February, 17th March, 21st April, 12th May, 23rd June, 14th July, 8th September, 13th October.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED.

INTERIM DIVIDEND.

An interim dividend of 4 per cent., less income tax, on account of the year 1935 was paid on the 15th October. This is at the same rate as last year, when it was followed by a final dividend of 10 per cent.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Oct. 21	Ritchie	Hicks Beach	Jones	*Blaker
,, 22	Blaker	Andrews	Hicks Beach	*Jones
,, 23	More	Jones	Blaker	*Hicks Beach
,, 24	Hicks Beach	Ritchie	Jones	*Blaker
,, 25	Andrews	Blaker	Hicks Beach	Jones
,, 26	Jones	More	Blaker	Hicks Beach
	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Oct. 21	Hicks Beach	*Ritchie	*Andrews	More
,, 22	*Blaker	Andrews	*More	Ritchie
,, 23	Jones	*More	*Ritchie	Andrews
,, 24	*Hicks Beach	Ritchie	Andrews	More
,, 25	Blaker	*Andrews	*More	Ritchie
,, 26	Jones	More	Ritchie	Andrews

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

A UNIVERSAL APPEAL

To LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th October, 1935.

	Div. Months.	Middle Price 16 Oct. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	111¾	3 11 7	3 4 5
Consols 2½%	JAJO	82¼	3 0 9	—
War Loan 3½% 1952 or after	JD	104	3 7 4	3 3 10
Funding 4% Loan 1960-90	MN	113	3 10 10	3 4 9
Funding 3% Loan 1959-69	AO	99¼	3 0 5	3 0 9
Victory 4% Loan Av. life 23 years	MS	111¾	3 11 7	3 5 4
Conversion 5% Loan 1944-64	MN	116	4 6 2	2 15 0
Conversion 4½% Loan 1940-44	JJ	109	4 2 7	2 14 0
Conversion 3½% Loan 1961 or after	AO	103¼	3 7 10	3 6 2
Conversion 3% Loan 1948-53	MS	101	2 19 5	2 18 0
Conversion 2½% Loan 1944-49	AO	98¼	2 10 10	2 14 8
Local Loans 3% Stock 1912 or after	JAJO	91½	3 5 7	—
Bank Stock	AO	352	3 8 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84	3 5 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	92	3 5 3	—
India 4½% 1950-55	MN	109xd	4 2 7	3 14 2
India 3½% 1931 or after	JAJO	93	3 15 3	—
India 3% 1948 or after	JAJO	79½	3 15 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 4
Sudan 4% 1974 Red. in part after 1950	MN	111xd	3 12 1	3 1 6
Tanganyika 4% Guaranteed 1951-71	FA	111	3 12 1	3 1 5
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 17 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 11 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	101	3 14 3	3 13 0
Canada 4% 1953-58	MS	105	3 16 2	3 12 4
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	99	3 10 8	3 11 9
*New Zealand 3% 1945	AO	99	3 0 7	3 2 6
Nigeria 4% 1963	AO	111	3 12 1	3 7 9
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 1
*Victoria 3½% 1929-49	AO	98	3 11 5	3 13 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	92	3 5 3	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 4
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	79	3 3 3	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	91	3 5 11	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	97½	2 11 3	2 14 4
Metropolitan Water Board 3% "A" 1963-2003	AO	95	3 3 2	3 3 8
Do. do. 3% "B" 1934-2003	MS	94	3 3 10	3 4 4
Do. do. 3% "E" 1953-73	JJ	98	3 1 3	3 1 10
Middlesex County Council 4% 1952-72	MN	111½	3 11 9	3 2 4
† Do. do. 4½% 1950-70	MN	114	3 18 11	3 6 0
Nottingham 3% Irredeemable	MN	90	3 6 8	—
Sheffield Corp. 3½% 1968	JJ	103	3 8 0	3 7 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	110½	3 12 5	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	132½	3 15 6	—
Gt. Western Rly. 5% Rent Charge	FA	129½	3 17 3	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	125½	3 19 8	—
Gt. Western Rly. 5% Preference	MA	111½	4 9 8	—
Southern Rly. 4% Debenture	JJ	109½	3 13 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	110½	3 12 5	3 8 0
Southern Rly. 5% Guaranteed	MA	124½	4 0 4	—
Southern Rly. 5% Preference	MA	112½	4 8 11	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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